

has been instrumental during the past two years in designing any of the accounting or reporting systems under review in the biennial audit.

(d) The independent auditor selected by the Bell operating company to conduct the audit shall develop a detailed audit program based on the final audit requirements and submit it to the Federal/State joint audit team. The Federal/State joint audit team shall have 30 days to review the audit program and determine any modifications that shall be incorporated into the final audit program.

(e) During the course of the biennial audit, the independent auditor, among other things, shall:

(1) Inform the Federal/State joint audit team of any revisions to the final audit program or to the scope of the audit.

(2) Notify the Federal/State joint audit team of any meetings with the Bell operating company or its separate affiliate in which audit findings are discussed.

(3) Submit to the Chief, Common Carrier Bureau, any accounting or rule interpretations necessary to complete the audit.

[62 FR 2926, Jan. 21, 1997]

§ 53.213 Audit analysis and evaluation.

(a) Within 60 days after the end of the audit period, but prior to discussing the audit findings with the Bell operating company or the separate affiliate, the independent auditor shall submit a draft of the audit report to the Federal/State joint audit team.

(1) The Federal/State joint audit team shall have 45 days to review the audit findings and audit workpapers, and offer its recommendations concerning the conduct of the audit or the audit findings to the independent auditor. Exceptions of the Federal/State joint audit team to the finding and conclusions of the independent auditor that remain unresolved shall be included in the final audit report.

(2) Within 15 days after receiving the Federal/State joint audit team's recommendations and making appropriate revisions to the audit report, the independent auditor shall submit the audit report to the Bell operating company for its response to the audit findings

and send a copy to the Federal/State joint audit team. The independent auditor may request additional time to perform additional audit work as recommended by the Federal/State joint audit team.

(b) Within 30 days after receiving the audit report, the Bell operating company will respond to the audit findings and send a copy of its response to the Federal/State joint audit team. The Bell operating company's response shall be included as part of the final audit report along with any reply that the independent auditor wishes to make to the response.

(c) Within 10 days after receiving the response of the Bell operating company, the independent auditor shall make available for public inspection the final audit report by filing it with the Commission and the state regulatory agencies participating on the joint audit team.

(d) Interested parties may file comments with the Commission within 60 days after the audit report is made available for public inspection.

[62 FR 2927, Jan. 21, 1997]

Subpart D—Manufacturing by Bell Operating Companies

§ 53.301 [Reserved]

Subpart E—Electronic Publishing by Bell Operating Companies

§ 53.401 [Reserved]

Subpart F—Alarm Monitoring Services

§ 53.501 [Reserved]

PART 54—UNIVERSAL SERVICE

Subpart A—General Information

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AUTHORITY: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

SOURCE: 62 FR 32948, June 17, 1997, unless otherwise noted.

Subpart A—General Information

§ 54.1 Basis and purpose.

(a) *Basis.* These rules are issued pursuant to the Communications Act of 1934, as amended.

(b) *Purpose.* The purpose of these rules is to implement section 254 of the Communications Act of 1934, as amended, 47 USC 254.

§ 54.5 Terms and definitions.

Terms used in this part have the following meanings:

Act. The term “Act” refers to the Communications Act of 1934, as amended.

Administrator. The term “Administrator” shall refer to the Universal Service Administrative Company that is an independent subsidiary of the National Exchange Carrier Association, Inc., and that has been appointed the permanent Administrator of the federal universal service support mechanisms.

Competitive eligible telecommunications carrier. A “competitive eligible telecommunications carrier” is a carrier that meets the definition of an “eligible telecommunications carrier” below and does not meet the definition of an “incumbent local exchange carrier” in § 51.5 of this chapter.

Contributor. The term “contributor” shall refer to an entity required to contribute to the universal service support mechanisms pursuant to § 54.703.

Eligible telecommunications carrier. “Eligible telecommunications carrier” means a carrier designated as such by a state commission pursuant to § 54.201.

Incumbent local exchange carrier. “Incumbent local exchange carrier” or “ILEC” has the same meaning as that term is defined in § 51.5 of this chapter.

Information service. “Information service” is the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.

Internet access. “Internet access” includes the following elements:

- (1) The transmission of information as common carriage;
- (2) The transmission of information as part of a gateway to an information service, when that transmission does

not involve the generation or alteration of the content of information, but may include data transmission, address translation, protocol conversion, billing management, introductory information content, and navigational systems that enable users to access information services, and that do not affect the presentation of such information to users; and

- (3) Electronic mail services (e-mail).

Interstate telecommunication. “Interstate telecommunication” is a communication or transmission:

- (1) From any State, Territory, or possession of the United States (other than the Canal zone), or the District of Columbia, to any other State, Territory, or possession of the United States (other than the Canal Zone), or the District of Columbia,

- (2) From or to the United States to or from the Canal Zone, insofar as such communication or transmission takes place within the United States, or

- (3) Between points within the United States but through a foreign country.

Interstate transmission. “Interstate transmission” is the same as interstate telecommunication.

Intrastate telecommunication. “Intrastate telecommunication” is a communication or transmission from within any State, Territory, or possession of the United States, or the District of Columbia to a location within that same State, Territory, or possession of the United States, or the District of Columbia.

Intrastate transmission. “Intrastate transmission” is the same as intrastate telecommunication.

LAN. “LAN” is a local area network, which is a set of high-speed links connecting devices, generally computers, on a single shared medium, usually on the user’s premises.

Rural area. A “rural area” is a non-metropolitan county or county equivalent, as defined in the Office of Management and Budget’s (OMB) Revised Standards for Defining Metropolitan Areas in the 1990s and identifiable from the most recent Metropolitan Statistical Area (MSA) list released by OMB, or any contiguous non-urban Census Tract or Block Numbered Area within an MSA-listed metropolitan county

identified in the most recent Goldsmith Modification published by the Office of Rural Health Policy of the U.S. Department of Health and Human Services.

Rural telephone company. “Rural telephone company” has the same meaning as that term is defined in §51.5 of this chapter.

State commission. The term “state commission” means the commission, board or official (by whatever name designated) that, under the laws of any state, has regulatory jurisdiction with respect to intrastate operations of carriers.

Technically feasible. “Technically feasible” means capable of accomplishment as evidenced by prior success under similar circumstances. For example, preexisting access at a particular point evidences the technical feasibility of access at substantially similar points. A determination of technical feasibility does not consider economic, accounting, billing, space or site except that space and site may be considered if there is no possibility of expanding available space.

Telecommunications. “Telecommunications” is the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.

Telecommunications carrier. A “telecommunications carrier” is any provider of telecommunications services, except that such term does not include aggregators of telecommunications services as defined in section 226 of the Act. A telecommunications carrier shall be treated as a common carrier under the Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage. This definition includes cellular mobile radio service (CMRS) providers, interexchange carriers (IXCs) and, to the extent they are acting as telecommunications carriers, companies that provide both telecommunications and information services. Private mobile radio service (PMRS) providers are telecommuni-

cations carriers to the extent they provide domestic or international telecommunications for a fee directly to the public.

Telecommunications channel. “Telecommunications channel” means a telephone line, or, in the case of wireless communications, a transmittal line or cell site.

Telecommunications service. “Telecommunications service” is the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Website. The term “website” shall refer to any websites operated by the Administrator in connection with the schools and libraries support mechanism, the rural health care support mechanism, the high cost mechanism, and the low income mechanism.

[62 FR 32948, June 17, 1997, as amended at 62 FR 41303, Aug. 1, 1997; 63 FR 70571, Dec. 21, 1998]

§54.7 Intended use of federal universal service support.

A carrier that receives federal universal service support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

Subpart B—Services Designated for Support

§54.101 Supported services for rural, insular and high cost areas.

(a) *Services designated for support.* The following services or functionalities shall be supported by federal universal service support mechanisms:

(1) *Voice grade access to the public switched network.* “Voice grade access” is defined as a functionality that enables a user of telecommunications services to transmit voice communications, including signalling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call. For the purposes of this part, bandwidth for voice grade access should be, at a minimum, 300 to 3,000 Hertz;

(2) *Local usage.* “Local usage” means an amount of minutes of use of exchange service, prescribed by the Commission, provided free of charge to end users;

(3) *Dual tone multi-frequency signaling or its functional equivalent.* “Dual tone multi-frequency” (DTMF) is a method of signaling that facilitates the transportation of signaling through the network, shortening call set-up time;

(4) *Single-party service or its functional equivalent.* “Single-party service” is telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or, in the case of wireless telecommunications carriers, which use spectrum shared among users to provide service, a dedicated message path for the length of a user’s particular transmission;

(5) *Access to emergency services.* “Access to emergency services” includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations. 911 is defined as a service that permits a telecommunications user, by dialing the three-digit code “911,” to call emergency services through a Public Service Access Point (PSAP) operated by the local government. “Enhanced 911” is defined as 911 service that includes the ability to provide automatic numbering information (ANI), which enables the PSAP to call back if the call is disconnected, and automatic location information (ALI), which permits emergency service providers to identify the geographic location of the calling party. “Access to emergency services” includes access to 911 and enhanced 911 services to the extent the local government in an eligible carrier’s service area has implemented 911 or enhanced 911 systems;

(6) *Access to operator services.* “Access to operator services” is defined as access to any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call;

(7) *Access to interexchange service.* “Access to interexchange service” is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the func-

tional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier’s network;

(8) *Access to directory assistance.* “Access to directory assistance” is defined as access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings; and

(9) *Toll limitation for qualifying low-income consumers.* Toll limitation for qualifying low-income consumers is described in subpart E of this part.

(b) *Requirement to offer all designated services.* An eligible telecommunications carrier must offer each of the services set forth in paragraph (a) of this section in order to receive federal universal service support.

(c) *Additional time to complete network upgrades.* A state commission may grant the petition of a telecommunications carrier that is otherwise eligible to receive universal service support under § 54.201 requesting additional time to complete the network upgrades needed to provide single-party service, access to enhanced 911 service, or toll limitation. If such petition is granted, the otherwise eligible telecommunications carrier will be permitted to receive universal service support for the duration of the period designated by the state commission. State commissions should grant such a request only upon a finding that exceptional circumstances prevent an otherwise eligible telecommunications carrier from providing single-party service, access to enhanced 911 service, or toll limitation. The period should extend only as long as the relevant state commission finds that exceptional circumstances exist and should not extend beyond the time that the state commission deems necessary for that eligible telecommunications carrier to complete network upgrades. An otherwise eligible telecommunications carrier that is incapable of offering one or more of these three specific universal services must demonstrate to the state commission that exceptional circumstances exist with respect to each service for

which the carrier desires a grant of additional time to complete network upgrades.

[62 FR 32948, June 17, 1997, as amended at 63 FR 2125, Jan. 13, 1998; 63 FR 33585, June 19, 1998]

Subpart C—Carriers Eligible for Universal Service Support

§ 54.201 Definition of eligible telecommunications carriers, generally.

(a) *Carriers eligible to receive support.*

(1) Beginning January 1, 1998, only eligible telecommunications carriers designated under paragraphs (b) through (d) of this section shall receive universal service support distributed pursuant to part 36 and part 69 of this chapter, and subparts D and E of this part.

(2) A state commission that is unable to designate as an eligible telecommunications carrier, by January 1, 1998, a carrier that sought such designation before January 1, 1998, may, once it has designated such carrier, file with the Commission a petition for waiver of paragraph (a)(1) of this section requesting that the carrier receive universal service support retroactive to January 1, 1998. The state commission must explain why it did not designate such carrier as eligible by January 1, 1998, and provide a justification for why providing support retroactive to January 1, 1998, serves the public interest.

(3) Only eligible telecommunications carriers designated under paragraphs (b) through (d) of this section shall receive universal service support distributed pursuant to subpart G of this part. This paragraph does not apply to support distributed pursuant to § 54.621(a).

(4) This paragraph does not apply to support distributed pursuant to subpart F of this part.

(b) A state commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (d) of this section as an eligible telecommunications carrier for a service area designated by the state commission.

(c) Upon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural

telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission, so long as each additional requesting carrier meets the requirements of paragraph (d) of this section. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest.

(d) A common carrier designated as an eligible telecommunications carrier under this section shall be eligible to receive universal service support in accordance with section 254 of the Act and shall, throughout the service area for which the designation is received:

(1) Offer the services that are supported by federal universal service support mechanisms under subpart B of this part and section 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(2) Advertise the availability of such services and the charges therefore using media of general distribution.

(e) For the purposes of this section, the term *facilities* means any physical components of the telecommunications network that are used in the transmission or routing of the services that are designated for support pursuant to subpart B of this part.

(f) For the purposes of this section, the term "own facilities" includes, but is not limited to, facilities obtained as unbundled network elements pursuant to part 51 of this chapter, provided that such facilities meet the definition of the term "facilities" under this subpart.

(g) A state commission shall not require a common carrier, in order to satisfy the requirements of paragraph (d)(1) of this section, to use facilities that are located within the relevant service area, as long as the carrier uses facilities to provide the services designated for support pursuant to subpart B of this part within the service area.

(h) A state commission shall designate a common carrier that meets

the requirements of this section as an eligible telecommunications carrier irrespective of the technology used by such carrier.

(i) A state commission shall not designate as an eligible telecommunications carrier a telecommunications carrier that offers the services supported by federal universal service support mechanisms exclusively through the resale of another carrier's services.

[62 FR 32948, June 17, 1997, as amended at 63 FR 2125, Jan. 13, 1998]

§ 54.203 Designation of eligible telecommunications carriers for unserved areas.

(a) If no common carrier will provide the services that are supported by federal universal service support mechanisms under section 254(c) of the Act and subpart B of this part to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services, or a state commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof.

(b) Any carrier or carriers ordered to provide such service under this section shall meet the requirements of section 54.201(d) and shall be designated as an eligible telecommunications carrier for that community or portion thereof.

§ 54.205 Relinquishment of universal service.

(a) A state commission shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the state commission of such relinquishment.

(b) Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier

to cease providing universal service in an area served by more than one eligible telecommunications carrier, the state commission shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The state commission shall establish a time, not to exceed one year after the state commission approves such relinquishment under this section, within which such purchase or construction shall be completed.

§ 54.207 Service areas.

(a) The term *service area* means a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. A service area defines the overall area for which the carrier shall receive support from federal universal service support mechanisms.

(b) In the case of a service area served by a rural telephone company, *service area* means such company's "study area" unless and until the Commission and the states, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c) of the Act, establish a different definition of service area for such company.

(c) If a state commission proposes to define a service area served by a rural telephone company to be other than such company's study area, the Commission will consider that proposed definition in accordance with the procedures set forth in this paragraph.

(1) A state commission or other party seeking the Commission's agreement in redefining a service area served by a rural telephone company shall submit a petition to the Commission. The petition shall contain:

(i) The definition proposed by the state commission; and

(ii) The state commission's ruling or other official statement presenting the state commission's reasons for adopting its proposed definition, including an analysis that takes into account the

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recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company.

(2) The Commission shall issue a Public Notice of any such petition within fourteen (14) days of its receipt.

(3) The Commission may initiate a proceeding to consider the petition within ninety (90) days of the release date of the Public Notice.

(i) If the Commission initiates a proceeding to consider the petition, the proposed definition shall not take effect until both the state commission and the Commission agree upon the definition of a rural service area, in accordance with paragraph (b) of this section and section 214(e)(5) of the Act.

(ii) If the Commission does not act on the petition within ninety (90) days of the release date of the Public Notice, the definition proposed by the state commission will be deemed approved by the Commission and shall take effect in accordance with state procedures.

(d) The Commission may, on its own motion, initiate a proceeding to consider a definition of a service area served by a rural telephone company that is different from that company's study area. If it proposes such different definition, the Commission shall seek the agreement of the state commission according to this paragraph.

(1) The Commission shall submit a petition to the state commission according to that state commission's procedures. The petition submitted to the relevant state commission shall contain:

(i) The definition proposed by the Commission; and

(ii) The Commission's decision presenting its reasons for adopting the proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company.

(2) The Commission's proposed definition shall not take effect until both the state commission and the Commission agree upon the definition of a rural service area, in accordance with para-

graph (b) of this section and section 214(e)(5) of the Act.

(e) The Commission delegates its authority under paragraphs (c) and (d) of this section to the Chief, Common Carrier Bureau.

Subpart D—Universal Service Support for High Cost Areas

§ 54.301 Local switching support.

(a) *Calculation of local switching support.* (1) Beginning January 1, 1998, an incumbent local exchange carrier that has been designated an eligible telecommunications carrier and that serves a study area with 50,000 or fewer access lines shall receive support for local switching costs using the following formula: the carrier's projected annual unseparated local switching revenue requirement, calculated pursuant to paragraph (d) of this section, shall be multiplied by the local switching support factor. For purposes of this section, local switching costs shall be defined as Category 3 local switching costs under part 36 of this chapter.

(2) *Local switching support factor.* (i) The local switching support factor shall be defined as the difference between the 1996 weighted interstate DEM factor, calculated pursuant to § 36.125(f) of this chapter, and the 1996 unweighted interstate DEM factor.

(ii) If the number of a study area's access lines increases such that, under § 36.125(f) of this chapter, the weighted interstate DEM factor for 1997 or any successive year would be reduced, that lower weighted interstate DEM factor shall be applied to the carrier's 1996 unweighted interstate DEM factor to derive a new local switching support factor.

(3) Beginning January 1, 1998, the sum of the unweighted interstate DEM factor, as defined in § 36.125(a)(5) of this chapter, and the local switching support factor shall not exceed 0.85. If the sum of those two factors would exceed 0.85, the local switching support factor shall be reduced to a level that would reduce the sum of the factors to 0.85.

(b) *Submission of data to the Administrator.* Each incumbent local exchange carrier that has been designated an eligible telecommunications carrier and that serves a study area with 50,000 or

fewer access lines shall, for each study area, provide the Administrator with the projected total unseparated dollar amount assigned to each account listed below for the calendar year following each filing. This information must be provided to the Administrator no later

than October 1 of each year. The Administrator shall use this information to calculate the projected annual unseparated local switching revenue requirement pursuant to paragraph (d) of this section.

I

| | |
|---|---------------------------|
| Telecommunications Plant in Service (TPIS) | Account 2001 |
| Telecommunications Plant—Other | Accounts 2002, 2003, 2005 |
| General Support Assets | Account 2110 |
| Central Office Assets | Accounts 2210, 2220, 2230 |
| Central Office—switching, Category 3 (local switching) | Account 2210, Category 3 |
| Information Origination/Termination Assets | Account 2310 |
| Cable and Wire Facilities Assets | Account 2410 |
| Amortizable Tangible Assets | Account 2680 |
| Intangibles | Account 2690 |

II

| | |
|--|-----------------------------|
| Rural Telephone Bank (RTB) Stock | Included in Account 1402 |
| Materials and Supplies | Account 1220.1 |
| Cash Working Capital | Defined in 47 CFR 65.820(d) |

III

| | |
|--|---------------------------|
| Accumulated Depreciation | Account 3100 |
| Accumulated Amortization | Accounts 3400, 3500, 3600 |
| Net Deferred Operating Income Taxes | Accounts 4100, 4340 |
| Network Support Expenses | Account 6110 |
| General Support Expenses | Account 6120 |
| Central Office Switching, Operator Systems, and Central Office Transmission Expenses | Accounts 6210, 6220, 6230 |
| Information Origination/Termination Expenses | Account 6310 |
| Cable and Wire Facilities Expenses | Account 6410 |
| Other Property, Plant and Equipment Expenses | Account 6510 |
| Network Operations Expenses | Account 6530 |
| Access Expense | Account 6540 |
| Depreciation and Amortization Expense | Account 6560 |
| Marketing Expense | Account 6610 |
| Services Expense | Account 6620 |
| Corporate Operations Expense | Accounts 6710, 6720 |
| Operating Taxes | Accounts 7230, 7240 |
| Federal Investment Tax Credits | Accounts 7210 |
| Provision for Deferred Operating Income Taxes—Net | Account 7250 |
| Allowance for Funds Used During Construction | Account 7340 |
| Charitable Contributions | Included in Account 7370 |
| Interest and Related Items | Account 7500 |

IV

| | |
|---|---------------------|
| Other Non-Current Assets | Account 1410 |
| Deferred Maintenance and Retirements | Account 1438 |
| Deferred Charges | Account 1439 |
| Other Jurisdictional Assets and Liabilities | Accounts 1500, 4370 |
| Customer Deposits | Account 4040 |
| Other Long-Term Liabilities | Account 4310 |

(c) *Allocation of accounts to switching.* The Administrator shall allocate to local switching, the accounts reported pursuant to paragraph (b) of this section as prescribed in this paragraph.

(1) General Support Assets (Account 2110); Amortizable Tangible Assets (Ac-

count 2680); Intangibles (Account 2690); and General Support Expenses (Account 6120) shall be allocated according to the following factor:

Account 2210 Category+3 (Account 2210 + Account 2220 + Account 2230 + Account 2310 + Account 2410).

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(2) Telecommunications Plant—Other (Accounts 2002, 2003, 2005); Rural Telephone Bank (RTB) Stock (included in Account 1402); Materials and Supplies (Account 1220.1); Cash Working Capital (§65.820(d) of this chapter); Accumulated Amortization (Accounts 3400, 3500, 3600); Net Deferred Operating Income Taxes (Accounts 4100, 4340); Network Support Expenses (Account 6110); Other Property, Plant and Equipment Expenses (Account 6510); Network Operations Expenses (Account 6530); Marketing Expense (Account 6610); Services Expense (Account 6620); Operating Taxes (Accounts 7230, 7240); Federal Investment Tax Credits (Accounts 7210); Provision for Deferred Operating Income Taxes—Net (Account 7250); Interest and Related Items (Account 7500); Allowance for Funds Used During Construction (Account 7340); Charitable Contributions (included in Account 7370); Other Non-current Assets (Account 1410); Other Jurisdictional Assets and Liabilities (Accounts 1500, 4370); Customer Deposits (Account 4040); Other Long-term Liabilities (Account 4310); and Deferred Maintenance and Retirements (Account 1438) shall be allocated according to the following factor:

Account 2210 Category 3 ÷ Account 2001.

(3) Accumulated Depreciation for Central Office—switching (Account 3100 associated with Account 2210) and Depreciation and Amortization Expense for Central Office—switching (Account 6560 associated with Account 2210) shall be allocated according to the following factor:

Account 2210 Category 3 ÷ Account 2210.

(4) Accumulated Depreciation for General Support Assets (Account 3100 associated with Account 2110) and Depreciation and Amortization Expense for General Support Assets (Account 6560 associated with Account 2110) shall be allocated according to the following factor:

Account 2210 Category 3 ÷ Account 2001.

(5) Corporate Operations Expenses (Accounts 6710, 6720) shall be allocated according to the following factor:

$$\frac{[(\text{Account } 2210 \text{ Category } 3 \div (\text{Account } 2210 + \text{Account } 2220 + \text{Account } 2230))] \times (\text{Account } 6210 + \text{Account } 6220 + \text{Account } 6230)]}{[(\text{Account } 6530 + \text{Account } 6610 + \text{Account } 6620) \times (\text{Account } 2210 \text{ Category } 3 \div (\text{Account } 2210 + \text{Account } 2220 + \text{Account } 2230))] \div (\text{Account } 6210 + \text{Account } 6220 + \text{Account } 6230) + (\text{Account } 6530 + \text{Account } 6610 + \text{Account } 6620)}$$

6530 + Account 6610 + Account 6620) × (Account 2210 Category 3 ÷ Account 2001)] ÷ (Account 6210 + Account 6220 + Account 6230 + Account 6310 + Account 6410 + Account 6530 + Account 6610 + Account 6620).

(6) Central Office Switching, Operator Systems, and Central Office Transmission Expenses (Account 6210, Account 6220, Account 6230) shall be allocated according to the following factor:

Account 2210 Category 3 ÷ (Accounts 2210 + 2220 + 2230).

(d) *Calculation of the projected annual unseparated local switching revenue requirement.* The Administrator shall calculate the projected annual unseparated local switching revenue requirement by summing the components listed in this paragraph.

(1) Return on Investment attributable to COE Category 3 shall be obtained by multiplying the average projected unseparated local switching net investment by the authorized interstate rate of return. Projected unseparated local switching net investment shall be calculated as of each December 31 by deducting the accumulated reserves, deferrals and customer deposits attributable to the COE Category 3 investment from the gross investment attributable to COE Category 3. The average projected unseparated local switching net investment shall be calculated by summing the projected unseparated local switching net investment as of December 31 of the calendar year following the filing year and such investment as of December 31 of the filing year and dividing by 2.

(2) Depreciation expense attributable to COE Category 3 investment, allocated pursuant to paragraph (c) of this section.

(3) All expenses, excluding depreciation expense, collected in paragraph (b) of this section, allocated pursuant to paragraph (c) of this section.

(4) Federal income tax attributable to COE Category 3 shall be calculated using the following formula; the accounts listed shall be allocated pursuant to paragraph (c) of this section:

[Return on Investment attributable to COE Category 3 – Account 7340 –

Account 7500—Account 7210)] ×
[Federal Income Tax Rate ÷ (1 –
Federal Income Tax Rate)].

(e) *True-up adjustment*—(1) *Submission of true-up data.* Each incumbent local exchange carrier that has been designated an eligible telecommunications carrier and that serves a study area with 50,000 or fewer access lines shall, for each study area, provide the Administrator with the historical total unseparated dollar amount assigned to each account listed in paragraph (b) of this section for each calendar year no later than 12 months after the end of such calendar year.

(2) *Calculation of true-up adjustment.*

(i) The Administrator shall calculate the historical annual unseparated local switching revenue requirement for each carrier when historical data for each calendar year are submitted.

(ii) The Administrator shall calculate each carrier's local switching support payment, calculated pursuant to § 54.301(a), using its historical annual unseparated local switching revenue requirement.

(iii) For each carrier receiving local switching support, the Administrator shall calculate the difference between the support payment calculated pursuant to paragraph (e)(2)(ii) of this section and its support payment calculated using its projected annual unseparated local switching revenue requirement.

(iv) The Administrator shall adjust each carrier's local switching support payment by the difference calculated in paragraph (e)(2)(iii) of this section no later than 15 months after the end of the calendar year for which historical data are submitted.

(f) *Calculation of the local switching revenue requirement for average schedule companies.* (1) The local switching revenue requirement for average schedule companies, as defined in § 69.605(c) of this chapter, shall be calculated in accordance with a formula approved or modified by the Commission. The Administrator shall submit to the Commission and the Common Carrier Bureau for review and approval a formula that simulates the disbursements that would be received pursuant to this section by a company that is representative of average schedule companies.

For each annual period, the Administrator shall submit the formula, any proposed revisions of such formula, or a certification that no revisions to the formula are warranted on or before December 31 of each year.

(2) The Commission delegates its authority to review, modify, and approve the formula submitted by the Administrator pursuant to this paragraph to the Chief, Common Carrier Bureau.

[63 FR 2126, Jan. 13, 1998; 63 FR 33585, June 19, 1998]

§ 54.303 Long term support.

(a) Beginning January 1, 1998, an eligible telecommunications carrier that participates in the association Common Line pool shall receive Long Term Support.

(b) Long Term Support shall be calculated as prescribed in this paragraph.

(1) To calculate the unadjusted base-level of Long Term Support for 1998, the Administrator shall calculate the difference between the projected Common Line revenue requirement of association Common Line tariff participants projected to be recovered in 1997 and the sum of end user common line charges and the 1997 projected revenue recovered by the association Carrier Common Line charge as calculated pursuant to § 69.105(b)(2) of this chapter.

(2) To calculate Long Term Support for calendar year 1998, the Administrator shall adjust the base-level of Long Term Support calculated in paragraph (b)(1) of this section to reflect the annual percentage change in the actual nationwide average unseparated loop cost per working loop as filed by the Administrator in the previous calendar year, pursuant to § 36.622 of this chapter.

(3) To calculate Long Term Support for calendar year 1999, the Administrator shall adjust the level of support calculated in paragraph (b)(2) of this section to reflect the annual percentage change in the actual nationwide average unseparated loop cost per working loop as filed by the Administrator in the previous calendar year, pursuant to § 36.622 of this chapter.

(4) Beginning January 1, 2000, the Administrator shall calculate Long Term

Support annually by adjusting the previous year's level of support to reflect the annual percentage change in the Department of Commerce's Gross Domestic Product-Consumer Price Index (GDP-CPI).

[63 FR 2128, Jan. 13, 1998; 63 FR 33586, June 19, 1998]

§ 54.305 Sale or transfer of exchanges.

A carrier that acquires telephone exchanges from an unaffiliated carrier shall receive universal service support for the acquired exchanges at the same per-line support levels for which those exchanges were eligible prior to the transfer of the exchanges. A carrier that has entered into a binding commitment to buy exchanges prior to May 7, 1997 will receive support for the newly acquired lines based upon the average cost of all of its lines, both those newly acquired and those it had prior to execution of the sales agreement.

§ 54.307 Support to a competitive eligible telecommunications carrier.

(a) *Calculation of support.* A competitive eligible telecommunications carrier shall receive universal service support to the extent that the competitive eligible telecommunications carrier captures an incumbent local exchange carrier's (ILEC) subscriber lines or serves new subscriber lines in the ILEC's service area.

(1) A competitive eligible telecommunications carrier shall receive support for each line it serves based on the support the ILEC receives for each line.

(2) The ILEC's per-line support shall be calculated by dividing the ILEC's universal service support by the number of loops served by that ILEC at its most recent annual loop count.

(3) A competitive eligible telecommunications carrier that uses switching functionalities purchased as unbundled network elements pursuant to § 51.307 of this chapter to provide the supported services shall receive the lesser of the unbundled network element price for switching or the per-line DEM support of the ILEC, if any. A competitive eligible telecommunications carrier that uses loops pur-

chased as unbundled network elements pursuant to § 51.307 of this chapter to provide the supported services shall receive the lesser of the unbundled network element price for the loop or the ILEC's per-line payment from the high cost loop support and LTS, if any. The ILEC providing nondiscriminatory access to unbundled network elements to such competitive eligible telecommunications carrier shall receive the difference between the level of universal service support provided to the competitive eligible telecommunications carrier and the per-customer level of support previously provided to the ILEC.

(4) A competitive eligible telecommunications carrier that provides the supported services using neither unbundled network elements purchased pursuant to § 51.307 of this chapter nor wholesale service purchased pursuant to section 251(c)(4) of the Act will receive the full amount of universal service support previously provided to the incumbent local exchange carrier for that customer. The amount of universal service support provided to such incumbent local exchange carrier shall be reduced by an amount equal to the amount provided to such competitive eligible telecommunications carrier.

(b) *Submission of information to the Administrator.* In order to receive universal service support, a competitive eligible telecommunications carrier must provide the Administrator on or before July 31st of each year the number of working loops it serves in a service area. For universal service support purposes, working loops are defined as the number of working Exchange Line C&WF loops used jointly for exchange and message telecommunications service, including C&WF subscriber lines associated with pay telephones in C&WF Category 1, but excluding WATS closed end access and TWX service. This figure shall be calculated as of December 31st of the year preceding each July 31st filing.

[62 FR 32948, June 17, 1997, as amended at 63 FR 2128, Jan. 13, 1998]

Subpart E—Universal Service Support for Low-Income Consumers

§ 54.400 Terms and definitions.

As used in this subpart, the following terms shall be defined as follows:

(a) *Qualifying low-income consumer.* A “qualifying low-income consumer” is a consumer who meets the low-income eligibility criteria established by the state commission, or, in states that do not provide state Lifeline support, a consumer who participates in one of the following programs: Medicaid; food stamps; supplemental security income; federal public housing assistance; or Low-Income Home Energy Assistance Program.

(b) *Toll blocking.* “Toll blocking” is a service provided by carriers that lets consumers elect not to allow the completion of outgoing toll calls from their telecommunications channel.

(c) *Toll control.* “Toll control” is a service provided by carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle.

(d) *Toll limitation.* “Toll limitation” denotes either toll blocking or toll control for eligible telecommunications carriers that are incapable of providing both services. For eligible telecommunications carriers that are capable of providing both services, “toll limitation” denotes both toll blocking and toll control.

[62 FR 32952, June 17, 1997, as amended at 63 FR 2128, Jan. 13, 1998]

§ 54.401 Lifeline defined.

(a) As used in this subpart, *Lifeline* means a retail local service offering:

(1) That is available only to qualifying low-income consumers;

(2) For which qualifying low-income consumers pay reduced charges as a result of application of the Lifeline support amount described in § 54.403; and

(3) That includes the services or functionalities enumerated in § 54.101 (a)(1) through (a)(9). The carriers shall offer toll limitation to all qualifying low-income consumers at the time such consumers subscribe to Lifeline service. If the consumer elects to receive

toll limitation, that service shall become part of that consumer’s Lifeline service.

(b) Eligible telecommunications carriers may not disconnect Lifeline service for non-payment of toll charges.

(1) State commissions may grant a waiver of this requirement if the local exchange carrier can demonstrate that:

(i) It would incur substantial costs in complying with this requirement;

(ii) It offers toll limitation to its qualifying low-income consumers without charge; and

(iii) Telephone subscribership among low-income consumers in the carrier’s service area is greater than or equal to the national subscribership rate for low-income consumers. For purposes of this paragraph, a *low-income consumer* is one with an income below the poverty level for a family of four residing in the state for which the carrier seeks the waiver. The carrier may reapply for the waiver.

(2) A carrier may file a petition for review of the state commission’s decision with the Commission within 30 days of that decision. If a state commission has not acted on a petition for a waiver of this requirement within 30 days of its filing, the carrier may file that petition with the Commission on the 31st day after that initial filing.

(c) Eligible telecommunications carriers may not collect a service deposit in order to initiate Lifeline service, if the qualifying low-income consumer voluntarily elects toll blocking from the carrier, where available. If toll blocking is unavailable, the carrier may charge a service deposit.

(d) The state commission shall file or require the carrier to file information with the Administrator demonstrating that the carrier’s Lifeline plan meets the criteria set forth in this subpart and stating the number of qualifying low-income consumers and the amount of state assistance. Lifeline assistance shall be made available to qualifying low-income consumers as soon as the Administrator certifies that the carrier’s Lifeline plan satisfies the criteria set out in this subpart.

[62 FR 32948, June 17, 1997, as amended at 63 FR 2128, Jan. 13, 1998]

§ 54.403 Lifeline support amount.

(a) The federal baseline Lifeline support amount shall equal \$3.50 per qualifying low-income consumer. If the state commission approves an additional reduction of \$1.75 in the amount paid by consumers, additional federal Lifeline support in the amount of \$1.75 will be made available to the carrier providing Lifeline service to that consumer. Additional federal Lifeline support in an amount equal to one-half the amount of any state Lifeline support will be made available to the carrier providing Lifeline service to a qualifying low-income consumer if the state commission approves an additional reduction in the amount paid by that consumer equal to the state support multiplied by 1.5. The federal Lifeline support amount shall not exceed \$7.00 per qualifying low-income consumer.

(b) Eligible carriers that charge federal End-User Common Line charges or equivalent federal charges shall apply the federal baseline Lifeline support to waive Lifeline consumers' federal End-User Common Line charges. Such carriers shall apply any additional federal support amount to a qualifying low-income consumer's intrastate rate, if the state has approved of such additional support. Other carriers shall apply the federal baseline Lifeline support amount, plus the additional support amount, where applicable, to reduce their lowest tariffed (or otherwise generally available) residential rate for the services enumerated in § 54.101(a)(1) through (a)(9), and charge Lifeline consumers the resulting amount.

(c) Lifeline support for providing toll limitation shall equal the eligible telecommunications carrier's incremental cost of providing either toll blocking or toll control, whichever is selected by the particular consumer.

(d) In addition to the \$7.00 per qualifying low-income consumer described in paragraph (a) of this section, eligible incumbent local exchange carriers that serve qualifying low-income consumers who have toll blocking shall receive federal Lifeline support in amounts equal to the presubscribed interexchange carrier charge that incumbent local exchange carriers would be permitted to recover from such low-income consumers pursuant to § 69.153(b)

of this chapter. Eligible incumbent local exchange carriers that serve qualifying low-income consumers who have toll blocking shall apply this support to waive qualifying low-income consumers' presubscribed interexchange carrier charges. A competitive eligible telecommunications carrier that serves qualifying low-income consumers who have toll blocking shall receive federal Lifeline support in an amount equal to the presubscribed interexchange carrier charge that the incumbent local exchange carrier in that area would be permitted to recover, if it served those consumers.

[62 FR 32948, June 17, 1997, as amended at 63 FR 2128, Jan. 13, 1998]

§ 54.405 Carrier obligation to offer Lifeline.

All eligible telecommunications carriers shall make available Lifeline service, as defined in § 54.401, to qualifying low-income consumers.

§ 54.407 Reimbursement for offering Lifeline.

(a) Universal service support for providing Lifeline shall be provided directly to the eligible telecommunications carrier, based on the number of qualifying low-income consumers it serves, under administrative procedures determined by the Administrator.

(b) The eligible telecommunications carrier may receive universal service support reimbursement for each qualifying low-income consumer served. For each consumer receiving Lifeline service, the reimbursement amount shall equal the federal support amount, including the support amount described in § 54.403(c). The eligible telecommunications carrier's universal service support reimbursement shall not exceed the carrier's standard, non-Lifeline rate.

(c) In order to receive universal service support reimbursement, the eligible telecommunications carrier must keep accurate records of the revenues it forgoes in providing Lifeline in conformity with § 54.401. Such records shall be kept in the form directed by the Administrator and provided to the Administrator at intervals as directed by

the Administrator or as provided in this Subpart.

§ 54.409 Consumer qualification for Lifeline.

(a) To qualify to receive Lifeline service in states that provide state Lifeline service support, a consumer must meet the criteria established by the state commission. The state commission shall establish narrowly targeted qualification criteria that are based solely on income or factors directly related to income.

(b) To qualify to receive Lifeline in states that do not provide state Lifeline support, a consumer must participate in one of the following programs: Medicaid; food stamps; Supplemental Security Income; federal public housing assistance; or Low-Income Home Energy Assistance Program. In states not providing state Lifeline support, each carrier offering Lifeline service to a consumer must obtain that consumer's signature on a document certifying under penalty of perjury that consumer receives benefits from one of the programs mentioned in this paragraph and identifying the program or programs from which that consumer receives benefits. On the same document, a qualifying low-income consumer also must agree to notify the carrier if that consumer ceases to participate in the program or programs.

§ 54.411 Link Up program defined.

(a) For purposes of this subpart, the term "Link Up" shall describe the following assistance program for qualifying low-income consumers, which an eligible telecommunications carrier shall offer as part of its obligation set forth in §§ 54.101(a)(9) and 54.101(b):

(1) A reduction in the carrier's customary charge for commencing telecommunications service for a single telecommunications connection at a consumer's principal place of residence. The reduction shall be half of the customary charge or \$30.00, whichever is less; and

(2) A deferred schedule for payment of the charges assessed for commencing service, for which the consumer does not pay interest. The interest charges not assessed to the consumer shall be for connection charges of up to \$200.00

that are deferred for a period not to exceed one year. Charges assessed for commencing service include any charges that the carrier customarily assesses to connect subscribers to the network. These charges do not include any permissible security deposit requirements.

(b) A qualifying low-income consumer may choose one or both of the programs set forth in paragraph (a) of this section.

(c) A carrier's Link Up program shall allow a consumer to receive the benefit of the Link Up program for a second or subsequent time only for a principal place of residence with an address different from the residence address at which the Link Up assistance was provided previously.

§ 54.413 Reimbursement for revenue forgone in offering a Link Up program.

(a) Eligible telecommunications carriers may receive universal service support reimbursement for the revenue they forgo in reducing their customary charge for commencing telecommunications service and for providing a deferred schedule for payment of the charges assessed for commencing service for which the consumer does not pay interest, in conformity with § 54.411.

(b) In order to receive universal service support reimbursement for providing Link Up, eligible telecommunications carriers must keep accurate records of the revenues they forgo in reducing their customary charge for commencing telecommunications service and for providing a deferred schedule for payment of the charges assessed for commencing service for which the consumer does not pay interest, in conformity with § 54.411. Such records shall be kept in the form directed by the Administrator and provided to the Administrator at intervals as directed by the Administrator or as provided in this subpart. The forgone revenues for which the eligible telecommunications carrier may receive reimbursement shall include only the difference between the carrier's customary connection or interest charges and the charges actually assessed to the participating low-income consumer.

§ 54.415 Consumer qualification for Link Up.

(a) In states that provide state Lifeline service, the consumer qualification criteria for Link Up shall be the same criteria that the state established for Lifeline qualification in accord with § 54.409(a).

(b) In states that do not provide state Lifeline service, the consumer qualification criteria for Link Up shall be the same as the criteria set forth in § 54.409(b).

§ 54.417 Transition to the new Lifeline and Link Up programs.

The rules in this subpart shall take effect on January 1, 1998.

Subpart F—Universal Service Support for Schools and Libraries**§ 54.500 Terms and definitions.**

(a) *Billed entity.* A “billed entity” is the entity that remits payment to service providers for services rendered to eligible schools and libraries.

(b) *Elementary school.* An “elementary school” is a non-profit institutional day or residential school that provides elementary education, as determined under state law.

(c) *Library.* A “library” includes:

- (1) A public library;
- (2) A public elementary school or secondary school library;
- (3) An academic library;
- (4) A research library, which for the purpose of this section means a library that:

(i) Makes publicly available library services and materials suitable for scholarly research and not otherwise available to the public; and

(ii) Is not an integral part of an institution of higher education; and

(5) A private library, but only if the state in which such private library is located determines that the library should be considered a library for the purposes of this definition.

(d) *Library consortium.* A “library consortium” is any local, statewide, regional, or interstate cooperative association of libraries that provides for the systematic and effective coordination of the resources of schools, public, academic, and special libraries and information centers, for improving serv-

ices to the clientele of such libraries. For the purposes of these rules, references to library will also refer to library consortium.

(e) *Lowest corresponding price.* “Lowest corresponding price” is the lowest price that a service provider charges to non-residential customers who are similarly situated to a particular school, library, or library consortium for similar services.

(f) *Master contract.* A “master contract” is a contract negotiated with a service provider by a third party, the terms and conditions of which are then made available to an eligible school, library, rural health care provider, or consortium that purchases directly from the service provider.

(g) *Minor contract modification.* A “minor contract modification” is a change to a universal service contract that is within the scope of the original contract and has no effect or merely a negligible effect on price, quantity, quality, or delivery under the original contract.

(h) *National school lunch program.* The “national school lunch program” is a program administered by the U.S. Department of Agriculture and state agencies that provides free or reduced price lunches to economically disadvantaged children. A child whose family income is between 130 percent and 185 percent of applicable family size income levels contained in the nonfarm poverty guidelines prescribed by the Office of Management and Budget is eligible for a reduced price lunch. A child whose family income is 130 percent or less of applicable family size income levels contained in the nonfarm income poverty guidelines prescribed by the Office of Management and Budget is eligible for a free lunch.

(i) *Pre-discount price.* The “pre-discount price” means, in this subpart, the price the service provider agrees to accept as total payment for its telecommunications or information services. This amount is the sum of the amount the service provider expects to receive from the eligible school or library and the amount it expects to receive as reimbursement from the universal service support mechanisms for the discounts provided under this subpart.

(j) *Secondary school.* A “secondary school” is a non-profit institutional day or residential school that provides secondary education, as determined under state law. A secondary school does not offer education beyond grade 12.

(k) *State telecommunications network.* A “state telecommunications network” is a state government entity that procures, among other things, telecommunications offerings from multiple service providers and bundles such offerings into packages available to schools, libraries, or rural health care providers that are eligible for universal service support, or a state government entity that provides, using its own facilities, such telecommunications offerings to such schools, libraries, and rural health care providers.

(l) *Wide area network.* For purposes of this subpart, a “wide area network” is a voice or data network that provides connections from one or more computers within an eligible school or library to one or more computers or networks that are external to such eligible school or library. Excluded from this definition is a voice or data network that provides connections between or among instructional buildings of a single school campus or between or among non-administrative buildings of a single library branch.

[63 FR 2128, Jan. 13, 1998]

§ 54.501 Eligibility for services provided by telecommunications carriers.

(a) Telecommunications carriers shall be eligible for universal service support under this subpart for providing supported services to eligible schools, libraries, and consortia including those entities.

(b) *Schools.* (1) Only schools meeting the statutory definitions of “elementary school,” as defined in 20 U.S.C. 8801(14), or “secondary school,” as defined in 20 U.S.C. 8801(25), and not excluded under paragraphs (b)(2) or (b)(3) of this section shall be eligible for discounts on telecommunications and other supported services under this subpart.

(2) Schools operating as for-profit businesses shall not be eligible for discounts under this subpart.

(3) Schools with endowments exceeding \$50,000,000 shall not be eligible for discounts under this subpart.

(c) *Libraries.* (1) Only libraries eligible for assistance from a State library administrative agency under the Library Services and Technology Act (Public Law 104-208) and not excluded under paragraphs (c)(2) or (c)(3) of this section shall be eligible for discounts under this subpart.

(2) A library’s eligibility for universal service funding shall depend on its funding as an independent entity. Only libraries whose budgets are completely separate from any schools (including, but not limited to, elementary and secondary schools, colleges, and universities) shall be eligible for discounts as libraries under this subpart.

(3) Libraries operating as for-profit businesses shall not be eligible for discounts under this subpart.

(d) *Consortia.* (1) For purposes of seeking competitive bids for telecommunications services, schools and libraries eligible for support under this subpart may form consortia with other eligible schools and libraries, with health care providers eligible under subpart G, and with public sector (governmental) entities, including, but not limited to, state colleges and state universities, state educational broadcasters, counties, and municipalities, when ordering telecommunications and other supported services under this subpart. With one exception, eligible schools and libraries participating in consortia with ineligible private sector members shall not be eligible for discounts for interstate services under this subpart. A consortium may include ineligible private sector entities if the pre-discount prices of any services that such consortium receives from ILECs are generally tariffed rates.

(2) For consortia, discounts under this subpart shall apply only to the portion of eligible telecommunications and other supported services used by eligible schools and libraries.

(3) Service providers shall keep and retain records of rates charged to and discounts allowed for eligible schools and libraries—on their own or as part

of a consortium. Such records shall be available for public inspection.

[62 FR 32948, June 17, 1997, as amended at 63 FR 2129, Jan. 13, 1998]

§ 54.502 Supported telecommunications services.

For purposes of this subpart, supported telecommunications services provided by telecommunications carriers include all commercially available telecommunications services in addition to all reasonable charges that are incurred by taking such services, such as state and federal taxes. Charges for termination liability, penalty surcharges, and other charges not included in the cost of taking such service shall not be covered by the universal service support mechanisms.

[63 FR 2129, Jan. 13, 1998]

§ 54.503 Other supported special services.

For the purposes of this subpart, other supported special services provided by telecommunications carriers include Internet access and installation and maintenance of internal connections in addition to all reasonable charges that are incurred by taking such services, such as state and federal taxes. Charges for termination liability, penalty surcharges, and other charges not included in the cost of taking such services shall not be covered by the universal service support mechanisms.

[63 FR 2129, Jan. 13, 1998]

§ 54.504 Requests for services.

(a) *Competitive bid requirements.* Except as provided in § 54.511(c), an eligible school, library, or consortium that includes an eligible school or library shall seek competitive bids, pursuant to the requirements established in this subpart, for all services eligible for support under §§ 54.502 and 54.503. These competitive bid requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements.

(b) *Posting of FCC Form 470.* (1) An eligible school, library, or consortium that includes an eligible school or library seeking to receive discounts for

eligible services under this subpart, shall submit a completed FCC Form 470 to the Administrator. FCC Form 470 shall include, at a minimum, the following information, to the extent applicable with respect to the services requested:

(i) The computer equipment currently available or budgeted for purchase for the current, next, or other future academic years, as well as whether the computers have modems and, if so, what speed modems;

(ii) The internal connections, if any, that the school or library has in place or has budgeted to install in the current, next, or future academic years, or any specific plans for an organized voluntary effort to connect the classrooms;

(iii) The computer software necessary to communicate with other computers over an internal network and over the public telecommunications network currently available or budgeted for purchase for the current, next, or future academic years;

(iv) The experience of, and training received by, the relevant staff in the use of the equipment to be connected to the telecommunications network and training programs for which funds are committed for the current, next, or future academic years;

(v) Existing or budgeted maintenance contracts to maintain computers; and

(vi) The capacity of the school's or library's electrical system in terms of how many computers can be operated simultaneously without creating a fire hazard.

(2) FCC Form 470 shall be signed by the person authorized to order telecommunications and other supported services for the eligible school, library, or consortium and shall include that person's certification under oath that:

(i) The school or library is an eligible entity under §§ 254(h)(4) and 254(h)(5) of the Act and the rules adopted under this subpart;

(ii) The services requested will be used solely for educational purposes;

(iii) The services will not be sold, resold, or transferred in consideration for money or any other thing of value;

(iv) If the services are being purchased as part of an aggregated purchase with other entities, the request

identifies all co-purchasers and the services or portion of the services being purchased by the school or library;

(v) All of the necessary funding in the current funding year has been budgeted and approved to pay for the “non-discount” portion of requested connections and services as well as any necessary hardware or software, and to undertake the necessary staff training required to use the services effectively;

(vi) The school, library, or consortium including those entities has complied with all applicable state and local procurement processes; and

(vii) The school, library, or consortium including those entities has a technology plan that has been certified by its state, the Administrator, or an independent entity approved by the Commission.

(3) The Administrator shall post each FCC Form 470 that it receives from an eligible school, library, or consortium that includes an eligible school or library on its website designated for this purpose.

(4) After posting on the Administrator’s website an eligible school’s, library’s, or consortium’s FCC Form 470, the Administrator shall send confirmation of the posting to the entity requesting service. That entity shall then wait at least four weeks from the date on which its description of services is posted on the Administrator’s website before making commitments with the selected providers of services. The confirmation from the Administrator shall include the date after which the requestor may sign a contract with its chosen provider(s).

(c) *Filing of FCC Form 471.* An eligible school, library, or consortium that includes an eligible school or library seeking to receive discounts for eligible services under this subpart, shall, upon signing a contract for eligible services, submit a completed FCC Form 471 to the Administrator. A commitment of support is contingent upon the filing of FCC Form 471.

(d) *Rate disputes.* Schools, libraries, and consortia including those entities, and service providers may have recourse to the Commission, regarding interstate rates, and to state commissions, regarding intrastate rates, if they reasonably believe that the lowest

corresponding price is unfairly high or low.

(1) Schools, libraries, and consortia including those entities may request lower rates if the rate offered by the carrier does not represent the lowest corresponding price.

(2) Service providers may request higher rates if they can show that the lowest corresponding price is not compensatory, because the relevant school, library, or consortium including those entities is not similarly situated to and subscribing to a similar set of services to the customer paying the lowest corresponding price.

[62 FR 32948, June 17, 1997, as amended at 62 FR 41304, Aug. 1, 1997; 63 FR 2129, Jan. 13, 1998; 63 FR 70572, Dec. 21, 1998]

§ 54.505 Discounts.

(a) *Discount mechanism.* Discounts for eligible schools and libraries shall be set as a percentage discount from the pre-discount price.

(b) *Discount percentages.* The discounts available to eligible schools and libraries shall range from 20 percent to 90 percent of the pre-discount price for all eligible services provided by eligible providers, as defined in this subpart. The discounts available to a particular school, library, or consortium of only such entities shall be determined by indicators of poverty and high cost.

(1) For schools and school districts, the level of poverty shall be measured by the percentage of their student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism. School districts applying for eligible services on behalf of their individual schools may calculate the district-wide percentage of eligible students using a weighted average. For example, a school district would divide the total number of students in the district eligible for the national school lunch program by the total number of students in the district to compute the district-wide percentage of eligible students. Alternatively, the district could apply on behalf of individual schools and use the respective percentage discounts for which the individual schools are eligible.

(2) For libraries and library consortia, the level of poverty shall be based on the percentage of the student enrollment that is eligible for a free or reduced price lunch under the national school lunch program or a federally-approved alternative mechanism in the public school district in which they are located. If the library is not in a school district then its level of poverty shall be based on an average of the percentage of students eligible for the national school lunch program in each of the school districts that children living in the library's location attend. Library systems applying for discounted services on behalf of their individual branches shall calculate the system-wide percentage of eligible families using an unweighted average based on the percentage of the student enrollment that is eligible for a free or reduced price lunch under the national school lunch program in the public school district in which they are located for each of their branches or facilities.

(3) The Administrator shall classify schools and libraries as "urban" or "rural" based on location in an urban or rural area, according to the following designations.

(i) Schools and libraries located in metropolitan counties, as measured by the Office of Management and Budget's Metropolitan Statistical Area method, shall be designated as urban, except for those schools and libraries located within metropolitan counties identified by census block or tract in the Goldsmith Modification.

(ii) Schools and libraries located in non-metropolitan counties, as measured by the Office of Management and

Budget's Metropolitan Statistical Area method, shall be designated as rural. Schools and libraries located in rural areas within metropolitan counties identified by census block or tract in the Goldsmith Modification shall also be designated as rural.

(4) School districts, library systems, or other billed entities shall calculate discounts on supported services described in §54.502 or other supported special services described in §54.503 that are shared by two or more of their schools, libraries, or consortia members by calculating an average based on the applicable discounts of all member schools and libraries. School districts, library systems, or other billed entities shall ensure that, for each year in which an eligible school or library is included for purposes of calculating the aggregate discount rate, that eligible school or library shall receive a proportionate share of the shared services for which support is sought. For schools, the average discount shall be a weighted average of the applicable discount of all schools sharing a portion of the shared services, with the weighting based on the number of students in each school. For libraries, the average discount shall be a simple average of the applicable discounts to which the libraries sharing a portion of the shared services are entitled.

(c) *Matrix.* The Administrator shall use the following matrix to set a discount rate to be applied to eligible interstate services purchased by eligible schools, school districts, libraries, or library consortia based on the institution's level of poverty and location in an "urban" or "rural" area.

| Schools and Libraries discount matrix | | Discount level | |
|--|--|----------------|----------------|
| How disadvantaged? | | Urban discount | Rural discount |
| % of students eligible for national school lunch program | | | |
| <1 | | 20 | 25 |
| 1–19 | | 40 | 50 |
| 20–34 | | 50 | 60 |
| 35–49 | | 60 | 70 |
| 50–74 | | 80 | 80 |
| 75–100 | | 90 | 90 |

(d) [Reserved]

(e) *Interstate and intrastate services.* Federal universal service support for

schools and libraries shall be provided for both interstate and intrastate services.

(1) Federal universal service support under this subpart for eligible schools and libraries in a state is contingent upon the establishment of intrastate discounts no less than the discounts applicable for interstate services.

(2) A state may, however, secure a temporary waiver of this latter requirement based on unusually compelling conditions.

(f) *State support.* Federal universal service discounts shall be based on the price of a service prior to the application of any state provided support for schools or libraries.

[62 FR 32948, June 17, 1997, as amended at 62 FR 41304, Aug. 1, 1997; 63 FR 2130, Jan. 13, 1998; 63 FR 70572, Dec. 21, 1998]

§ 54.506 Internal connections.

A service is eligible for support as a component of an institution's internal connections if such service is necessary to transport information within one or more instructional buildings of a single school campus or within one or more non-administrative buildings that comprise a single library branch. Discounts are not available for internal connections in non-instructional buildings of a school or school district, or in administrative buildings of a library, to the extent that a library system has separate administrative buildings, unless those internal connections are essential for the effective transport of information to an instructional building of a school or to a non-administrative building of a library. Internal connections do not include connections that extend beyond a single school campus or single library branch. There is a rebuttable presumption that a connection does not constitute an internal connection if it crosses a public right-of-way.

[63 FR 2130, Jan. 13, 1998]

§ 54.507 Cap.

(a) *Amount of the annual cap.* The annual cap on federal universal service support for schools and libraries shall be \$2.25 billion per funding year, and all funding authority for a given funding year that is unused in that funding year shall be carried forward into subsequent funding years for use in ac-

cordance with demand, with the following exceptions:

(1) No more than \$562.5 million shall be collected or spent per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 to support the schools and libraries universal service support mechanism. No more than \$2.25 billion shall be collected or disbursed during the twelve month period from July 1, 1999 through June 30, 2000.

(2) The carryover of unused funding authority will not apply for the funding period January 1, 1998 through June 30, 1999. To the extent that the amounts collected in the funding period January 1, 1998 through June 30, 1999 are less than \$2.25 billion, the difference will not be carried over to subsequent funding years. Carryover of funds will occur only to the extent that funds are collected but not disbursed in the funding period January 1, 1998 through June 30, 1999.

(b) A funding year for purposes of the schools and libraries cap shall be the period July 1 through June 30. For the initiation of the mechanism only, the eighteen month period from January 1, 1998 to June 30, 1999 shall be considered a funding year. For the 1998–99 funding year:

(1) Schools and libraries filing applications within the initial 75-day filing window, and receiving approval for discounts on recurring services, shall receive funding for requested recurring services through June 30, 1999; and

(2) Schools and libraries filing applications within the initial 75-day filing window, and receiving approval for discounts on eligible nonrecurring services, may receive those nonrecurring services subject to the approved discount amounts through September 30, 1999.

(c) *Requests.* Funds shall be available to fund discounts for eligible schools and libraries and consortia of such eligible entities on a first-come-first-served basis, with requests accepted beginning on the first of July prior to each funding year. The Administrator shall maintain on the Administrator's website a running tally of the funds already committed for the existing funding year. The Administrator shall implement an initial filing period that

treats all schools and libraries filing within that period as if their applications were simultaneously received. The initial filing period shall begin on the date that the Administrator begins to receive applications for support, and shall conclude on a date to be determined by the Administrator. The Administrator may implement such additional filing periods as it deems necessary.

(d) *Annual filing requirement.* Schools and libraries, and consortia of such eligible entities shall file new funding requests for each funding year no sooner than the July 1 prior to the start of that funding year.

(e) *Long term contracts.* If schools and libraries enter into long term contracts for eligible services, the Administrator shall only commit funds to cover the pro rata portion of such a long term contract scheduled to be delivered during the funding year for which universal service support is sought.

(f) *Date services must be supplied.* The Administrator shall not approve funding for services received by a school or library before January 1, 1998.

(g) *Rules of priority.* Administrator shall act in accordance with paragraph (g)(1) of this section with respect to applicants that file a Form 471, as described in § 54.504(c) of this part, when a filing period described in paragraph (c) of this section is in effect. Administrator shall act in accordance with paragraph (g)(2) of this section with respect to applicants that file a Form 471, as described in § 54.504(c) of this part, at all times other than within a filing period described in paragraph (c) of this section.

(1) When the filing period described in paragraph (c) of this section closes, Administrator shall calculate the total demand for support submitted by applicants during the filing period. If total demand exceeds the total support available for that funding year, Administrator shall take the following steps:

(i) Schools and Libraries Corporation shall first calculate the demand for telecommunications services and Internet access for all discount categories, as determined by the schools and libraries discount matrix in § 54.505(c) of this part. These services shall receive first priority for the available funding.

(ii) Schools and Libraries Corporation shall then calculate the amount of available funding remaining after providing support for all telecommunications services and Internet access for all discount categories. Schools and Libraries Corporation shall allocate the remaining funds to the requests for support for internal connections, beginning with the most economically disadvantaged schools and libraries, as determined by the schools and libraries discount matrix in § 54.505(c) of this part. Schools and libraries eligible for a 90 percent discount shall receive first priority for the remaining funds, and those funds will be applied to their requests for internal connections.

(iii) To the extent that funds remain after the allocation described in § 54.507(g)(1) (i) and (ii), Schools and Libraries Corporation shall next allocate funds toward the requests for internal connections submitted by schools and libraries eligible for an 80 percent discount, then for a 70 percent discount, and shall continue committing funds for internal connections in the same manner to the applicants at each descending discount level until there are no funds remaining.

NOTE TO PARAGRAPH (G)(L)(III): To the extent that there are single discount percentage levels associated with "shared services" under § 54.505(b)(4), the Administrator shall allocate funds for internal connections beginning at the ninety percent discount level, then for the eighty-nine percent discount, then for the eighty-eight percent discount, and shall continue committing funds for internal connections in the same manner to the applicants at each descending discount level until there are no funds remaining.

(iv) If the remaining funds are not sufficient to support all of the funding requests within a particular discount level, Schools and Libraries Corporation shall divide the total amount of remaining support available by the amount of support requested within the particular discount level to produce a pro-rata factor. Schools and Libraries Corporation shall reduce the support level for each applicant within the particular discount level, by multiplying each applicant's requested amount of support by the pro-rata factor.

(v) Schools and Libraries Corporation shall commit funds to all applicants

consistent with the calculations described herein.

(2) *Rules of priority.* When expenditures in any funding year reach the level where only \$250 million remains before the cap will be reached, funds shall be distributed in accordance to the following rules of priority:

(i) The Administrator or the Administrator's subcontractor shall post a message on the Administrator's website, notify the Commission, and take reasonable steps to notify the educational and library communities that commitments for the remaining \$250 million of support will only be made to the most economically disadvantaged schools and libraries (those in the two most disadvantaged categories) for the next 30 days or the remainder of the funding year, whichever is shorter.

(ii) The most economically disadvantaged schools and libraries (those in the two most disadvantaged categories) that have not received discounts from the universal service support mechanism in the previous or current funding years shall have exclusive rights to secure commitments for universal service support under this subpart for a 30-day period or the remainder of the funding year, whichever is shorter. If such schools and libraries have received universal service support only for basic telephone service in the previous or current funding years, they shall remain eligible for the highest priority once spending commitments leave only \$250 million remaining before the funding cap is reached.

(iii) Other economically disadvantaged schools and libraries (those in the two most disadvantaged categories) that have received discounts from the universal service support mechanism in the previous or current funding years shall have the next highest priority, if additional funds are available at the end of the 30-day period or the funding year, whichever is shorter.

(iv) After all requests submitted by schools and libraries described in paragraphs (g)(2) and (g)(3) of this section during the 30-day period have been met, the Administrator shall allocate the remaining available funds to all other eligible schools and libraries in the order in which their requests have

been received by the Administrator, until the \$250 million is exhausted or the funding year ends.

[62 FR 32948, June 17, 1997, as amended at 62 FR 40748, July 30, 1997; 62 FR 41304, Aug. 1, 1997; 62 FR 56120, Oct. 29, 1997; 63 FR 2130, Jan. 13, 1998; 63 FR 3832, Jan. 27, 1998; 63 FR 45958, Aug. 28, 1998; 63 FR 70572, Dec. 21, 1998; 64 FR 22810, Apr. 28, 1999; 64 FR 30442, June 8, 1999; 64 FR 33788, June 24, 1999]

§ 54.509 Adjustments to the discount matrix.

(a) *Estimating future spending requests.* When submitting their requests for specific amounts of funding for a funding year, schools, libraries, library consortia, and consortia including such entities shall also estimate their funding requests for the following funding year to enable the Administrator, to estimate funding demand for the following year.

(b) *Reduction in percentage discounts.* If the estimates schools and libraries make of their future funding needs lead the Administrator to predict that total funding requests for a funding year will exceed the available funding, the Administrator shall calculate the percentage reduction to all schools and libraries, except those in the two most disadvantaged categories, necessary to permit all requests in the next funding year to be fully funded.

(c) *Remaining funds.* If funds remain under the cap at the end of the funding year in which discounts have been reduced below those set in the matrices, the Administrator shall consult with the Commission to establish the best way to distribute those funds.

[62 FR 32948, June 17, 1997, as amended at 62 FR 41304, Aug. 1, 1997; 63 FR 70572, Dec. 21, 1998]

§ 54.511 Ordering services.

(a) *Selecting a provider of eligible services.* In selecting a provider of eligible services, schools, libraries, library consortia, and consortia including any of those entities shall carefully consider all bids submitted and may consider relevant factors other than the pre-discount prices submitted by providers.

(b) *Lowest corresponding price.* Providers of eligible services shall not

charge schools, school districts, libraries, library consortia, or consortia including any of these entities a price above the lowest corresponding price for supported services, unless the Commission, with respect to interstate services or the state commission with respect to intrastate services, finds that the lowest corresponding price is not compensatory. Promotional rates offered by a service provider for a period of more than 90 days must be included among the comparable rates upon which the lowest corresponding price is determined.

(c) *Existing contracts.* (1) A signed contract for services eligible for discounts pursuant to this subpart between an eligible school or library as defined under § 54.501 or consortium that includes an eligible school or library and a service provider shall be exempt from the requirements set forth in § 54.504(a), (b)(3), and (b)(4) as follows:

(i) A contract signed on or before July 10, 1997 is exempt from the competitive bid requirements for the life of the contract; or

(ii) A contract signed after July 10, 1997, but before the date on which the universal service competitive bid system described in § 54.504 is operational, is exempt from the competitive bid requirements only with respect to services that are provided under such contract between January 1, 1998 and December 31, 1998.

(2) For a school, library, or consortium that includes an eligible school or library that takes service under or pursuant to a master contract, the date of execution of that master contract represents the applicable date for purposes of determining whether and to what extent the school, library, or consortium is exempt from the competitive bid requirements.

(3) The competitive bid system will be deemed to be operational when the Administrator is ready to accept and post FCC Form 470 from schools and libraries on a website and that website is available for use by service providers.

(d)(1) The exemption from the competitive bid requirements set forth in paragraph (c) of this section shall not apply to voluntary extensions or renewals of existing contracts, with the exception that an eligible school or li-

brary as defined under § 54.501 or consortium that includes an eligible school or library, that filed an application within the 75-day initial filing window for 1998 (January 30, 1998–April 15, 1998), may voluntarily extend or renew, to a date no later than June 30, 1999, an existing contract that otherwise would terminate between April 15, 1998 and June 30, 1999.

(2) For the 1998–1999 funding year, a contract exempt from the competitive bid requirement, as described in paragraph (c) of this section, may be voluntarily extended to September 30, 1999 only to the extent necessary to permit delivery of the nonrecurring services subject to that contract and for which discounts have been approved.

[62 FR 32948, June 17, 1997, as amended at 63 FR 2130, Jan. 13, 1998; 63 FR 33586, June 19, 1998; 63 FR 43097, Aug. 12, 1998; 63 FR 70572, Dec. 21, 1998; 64 FR 22810, Apr. 28, 1999]

§ 54.513 Resale.

(a) *Prohibition on resale.* Eligible services purchased at a discount under this subpart shall not be sold, resold, or transferred in consideration of money or any other thing of value.

(b) *Permissible fees.* This prohibition on resale shall not bar schools, school districts, libraries, and library consortia from charging either computer lab fees or fees for classes in how to navigate over the Internet. There is no prohibition on the resale of services that are not purchased pursuant to the discounts provided in this subpart.

§ 54.515 Distributing support.

(a) A telecommunications carrier providing services eligible for support under this subpart to eligible schools and libraries may, at the election of the carrier, treat the amount eligible for support under this subpart as an offset against the carrier's universal service contribution obligation for the year in which the costs for providing eligible services were incurred or receive a direct reimbursement from the Administrator for that amount. Carriers shall elect in January of each year the method by which they will be reimbursed and shall remain subject to that method for the duration of the calendar year. Any support amount that is owed a carrier that fails to

remit its monthly universal service contribution obligation, however, shall first be applied as an offset to that carrier's contribution obligation. Such a carrier shall remain subject to the offsetting method for the remainder of the calendar year in which it failed to remit their monthly universal service obligation. A carrier that continues to be in arrears on its universal service contribution obligations at the end of a calendar year shall remain subject to the offsetting method for the next calendar year.

(b) If a telecommunications carrier elects to treat the amount eligible for support under this subpart as an offset against the carrier's universal service contribution obligation and the total amount of support owed to the carrier exceeds its universal service obligation, calculated on an annual basis, the carrier shall receive a direct reimbursement in the amount of the difference. Any such reimbursement due a carrier shall be submitted to that carrier no later than the end of the first quarter of the calendar year following the year in which the costs were incurred and the offset against the carrier's universal service obligation was applied.

[63 FR 67009, Dec. 4, 1998]

§ 54.516 Auditing.

(a) *Recordkeeping requirements.* Schools and libraries shall be required to maintain for their purchases of telecommunications and other supported services at discounted rates the kind of procurement records that they maintain for other purchases.

(b) *Production of records.* Schools and libraries shall produce such records at the request of any auditor appointed by a state education department, the Administrator, or any state or federal agency with jurisdiction.

(c) *Random audits.* Schools and libraries shall be subject to random compliance audits to evaluate what services they are purchasing and how such services are being used.

[62 FR 32948, June 17, 1997, as amended at 62 FR 41304, Aug. 1, 1997; 63 FR 70572, Dec. 21, 1998]

§ 54.517 Services provided by non-telecommunications carriers.

(a) Non-telecommunications carriers shall be eligible for universal service support under this subpart for providing the supported services described in paragraph (b) of this section for eligible schools, libraries, and consortia including those entities.

(b) *Supported services.* Non-telecommunications carriers shall be eligible for universal service support under this subpart for providing Internet access and installation and maintenance of internal connections.

(c) *Requirements.* Such services provided by non-telecommunications carriers shall be subject to all the provisions of this subpart, except §§ 54.501(a), 54.502, 54.503, 54.515.

[62 FR 32948, June 17, 1997, as amended at 63 FR 2131, Jan. 13, 1998]

§ 54.518 Support for wide area networks.

To the extent that states, schools, or libraries build or purchase a wide area network to provide telecommunications services, the cost of such wide area networks shall not be eligible for universal service discounts provided under this subpart.

[63 FR 2131, Jan. 13, 1998]

§ 54.519 State telecommunications networks.

(a) *Telecommunications services.* State telecommunications networks may secure discounts under the universal service support mechanisms on supported telecommunications services (as described in § 54.502) on behalf of eligible schools and libraries (as described in § 54.501) or consortia that include an eligible school or library. Such state telecommunications networks shall pass on such discounts to eligible schools and libraries and shall:

(1) Maintain records listing each eligible school and library and showing the basis for each eligibility determination;

(2) Maintain records demonstrating the discount amount to which each eligible school and library is entitled and the basis for such determination;

(3) Take reasonable steps to ensure that each eligible school or library receives a proportionate share of the shared services;

(4) Request that service providers apply the appropriate discount amounts on the portion of the supported services used by each school or library;

(5) Direct eligible schools and libraries to pay the discounted price; and

(6) Comply with the competitive bid requirements set forth in § 54.504(a).

(b) *Internet access and installation and maintenance of internal connections.* State telecommunications networks either may secure discounts on Internet access and installation and maintenance of internal connections in the manner described in paragraph (a) of this section with regard to telecommunications, or shall be eligible, consistent with § 54.517(b), to receive universal service support for providing such services to eligible schools, libraries, and consortia including those entities.

[63 FR 2131, Jan. 13, 1998; 63 FR 33586, June 19, 1998]

Subpart G—Universal Service Support for Health Care Providers

§ 54.601 Eligibility.

(a) *Health care providers.* (1) Only an entity meeting the definition of “health care provider” as defined in this section shall be eligible to receive supported services under this subpart.

(2) For purposes of this subpart, a “health care provider” is any:

(i) Post-secondary educational institution offering health care instruction, including a teaching hospital or medical school;

(ii) Community health center or health center providing health care to migrants;

(iii) Local health department or agency;

(iv) Community mental health center;

(v) Not-for-profit hospital;

(vi) Rural health clinic; or

(vii) Consortium of health care providers consisting of one or more entities described in paragraphs (a)(2)(i) through (a)(2)(vi) of this section.

(3) Only public or non-profit health care providers shall be eligible to receive supported services under this subpart.

(4) Except with regard to those services provided under § 54.621, only a rural health care provider shall be eligible to receive supported services under this subpart. A “rural health care provider” is a health care provider located in a rural area, as defined in this part.

(5) Each separate site or location of a health care provider shall be considered an individual health care provider for purposes of calculating and limiting support under this subpart.

(b) *Consortia.* (1) An eligible health care provider may join a consortium with other eligible health care providers; with schools, libraries, and library consortia eligible under Subpart F; and with public sector (governmental) entities to order telecommunications services. With one exception, eligible health care providers participating in consortia with ineligible private sector members shall not be eligible for supported services under this subpart. A consortium may include ineligible private sector entities if such consortium is only receiving services at tariffed rates or at market rates from those providers who do not file tariffs.

(2) For consortia, universal service support under this subpart shall apply only to the portion of eligible services used by an eligible health care provider.

(3) Telecommunications carriers shall carefully maintain complete records of how they allocate the costs of shared facilities among consortium participants in order to charge eligible health care providers the correct amounts. Such records shall be available for public inspection.

(4) Telecommunications carriers shall calculate and justify with supporting documentation the amount of support for which each member of a consortium is eligible.

(c) *Services.* (1) Any telecommunications service of a bandwidth up to and including 1.544 Mbps that is the subject of a properly completed bona fide request by a rural health care provider shall be eligible for universal

service support, subject to the limitations described in this subpart. The length of a supported telecommunications service may not exceed the distance between the health care provider and the point farthest from that provider on the jurisdictional boundary of the nearest large city as defined in § 54.605(c).

(2) Limited toll-free access to an Internet service provider shall be eligible for universal service support under § 54.621.

§ 54.603 Competitive bid requirements.

(a) *Competitive bidding requirement.* To select the telecommunications carriers that will provide services eligible for universal service support to it under this subpart, each eligible health care provider shall participate in a competitive bidding process pursuant to the requirements established in this subpart and any additional and applicable state, local, or other procurement requirements.

(b) *Posting of FCC Form 465.* (1) An eligible health care provider seeking to receive telecommunications services eligible for universal service support under this subpart shall submit a completed FCC Form 465 to the Rural Health Care Corporation. FCC Form 465 shall be signed by the person authorized to order telecommunications services for the health care provider and shall include, at a minimum, that person's certification under oath that:

(i) The requester is a public or non-profit entity that falls within one of the seven categories set forth in the definition of health care provider, listed in § 54.601(a);

(ii) The requester is physically located in a rural area, unless the health care provider is requesting services provided under § 54.621;

(iii) If the health care provider is requesting services provided under § 54.621, that the requester cannot obtain toll-free access to an Internet service provider;

(iv) The requested service or services will be used solely for purposes reasonably related to the provision of health care services or instruction that the health care provider is legally authorized to provide under the law in the

state in which such health care services or instruction are provided;

(v) The requested service or services will not be sold, resold or transferred in consideration of money or any other thing of value; and

(vi) If the service or services are being purchased as part of an aggregated purchase with other entities or individuals, the full details of any such arrangement, including the identities of all co-purchasers and the portion of the service or services being purchased by the health care provider.

(2) The Rural Health Care Corporation shall post each FCC Form 465 that it receives from an eligible health care provider on its website designated for this purpose.

(3) After posting an eligible health care providers FCC Form 465 on the Rural Health Care Corporation website, the Rural Health Care Corporation shall send confirmation of the posting to the entity requesting services. The health care provider shall wait at least 28 days from the date on which its FCC Form 465 is posted on the website before making commitments with the selected telecommunications carrier(s).

(4) After selecting a telecommunications carrier, the health care provider shall certify to the Rural Health Care Corporation that the provider is selecting the most cost-effective method of providing the requested service or services, where the most cost-effective method of providing a service is defined as the method that costs the least after consideration of the features, quality of transmission, reliability, and other factors that the health care provider deems relevant to choosing a method of providing the required health care services. The health care provider shall submit to the Administrator paper copies of the responses or bids received in response to the requested services.

(5) The confirmation from the Rural Health Care Corporation shall include the date after which the requester may sign a contract with its chosen telecommunications carrier(s).

[62 FR 32948, June 17, 1997, as amended at 62 FR 41304, Aug. 1, 1997; 63 FR 2131, Jan. 13, 1998]

EDITORIAL NOTE: At 63 FR 70572, Dec. 21, 1998, § 54.603(a)(1) through (5) was amended by

Federal Communications Commission

§ 54.605

changing the words “Rural Health Care Corporation” to “Administrator”, however, (a)(1) through (5) did not exist in the 1998 edition of this volume.

§ 54.604 Existing contracts.

(a) *Existing contracts.* A signed contract for services eligible for support pursuant to this subpart between an eligible health care provider as defined under § 54.601 and a telecommunications carrier shall be exempt from the competitive bid requirements set forth in § 54.603(a) as follows:

(1) A contract signed on or before July 10, 1997 is exempt from the competitive bid requirement for the life of the contract; or

(2) A contract signed after July 10, 1997 but before the date on which the universal service competitive bid system described in § 54.603 is operational is exempt from the competitive bid requirements only with respect to services that will be provided under such contract between January 1, 1998 and December 31, 1998.

(b) For rural health care providers that take service under or pursuant to a master contract, as defined in § 54.500(f), the date of execution of that master contract represents the applicable date for purposes of determining whether and to what extent the rural health care provider is exempt from the competitive bid requirements.

(c) The competitive bid system will be deemed to be operational when the Administrator is ready to accept and post FCC Form 465 from rural health care providers on a website and that website is available for use by telecommunications carriers.

(d) The exemption from competitive bid requirements set forth in paragraph (a) of this section shall not apply to voluntary extensions or renewals of existing contracts, except to the extent that an eligible rural health care provider as defined in § 54.601 or consortium that includes an eligible health care provider, and that filed an application within the 75-day initial filing window for 1998 (May 1, 1998—July 14, 1998), may voluntarily extend or renew, to a date no later than June 30, 1999, an existing contract that otherwise would

terminate between July 14, 1998 and June 30, 1999.

[63 FR 2131, Jan. 13, 1998; 63 FR 33586, June 19, 1998, as amended at 63 FR 70572, Dec. 21, 1998; 64 FR 22810, Apr. 28, 1999]

§ 54.605 Determining the urban rate.

(a) If a rural health care provider requests an eligible service to be provided over a distance that is less than or equal to the “standard urban distance,” as defined in paragraph (d) of this section, for the state in which it is located, the urban rate for that service shall be a rate no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a similar service provided over the same distance in the nearest large city in the state, calculated as if it were provided between two points within the city.

(b) If a rural health care provider requests an eligible service to be provided over a distance that is greater than the “standard urban distance” for the state in which it is located, the urban rate shall be no higher than the highest tariffed or publicly-available rate charged to a commercial customer for a similar service provided over the standard urban distance in the nearest large city in the state, calculated as if the service were provided between two points within the city.

(c) The “nearest large city” is the city located in the eligible health care provider’s state, with a population of at least 50,000, that is nearest to the health care provider’s location, measured point to point, from the health care provider’s location to the point on that city’s jurisdictional boundary closest to the health care provider’s location.

(d) The “standard urban distance” for a state is the average of the longest diameters of all cities with a population of 50,000 or more within the state.

(e) The Administrator shall calculate the “standard urban distance” and shall post the “standard urban distance” and the maximum supported distance for each state on its website.

[62 FR 32948, June 17, 1997, as amended at 63 FR 2131, Jan. 13, 1998; 63 FR 70572, Dec. 21, 1998]

§ 54.607 Determining the rural rate.

(a) The rural rate shall be the average of the rates actually being charged to commercial customers, other than health care providers, for identical or similar services provided by the telecommunications carrier providing the service in the rural area in which the health care provider is located. The rates included in this average shall be for services provided over the same distance as the eligible service. The rates averaged to calculate the rural rate must not include any rates reduced by universal service support mechanisms. The “rural rate” shall be used as described in this subpart to determine the credit or reimbursement due to a telecommunications carrier that provides eligible telecommunications services to eligible health care providers.

(b) If the telecommunications carrier serving the health care provider is not providing any identical or similar services in the rural area, then the rural rate shall be the average of the tariffed and other publicly available rates, not including any rates reduced by universal service programs, charged for the same or similar services in that rural area over the same distance as the eligible service by other carriers. If there are no tariffed or publicly available rates for such services in that rural area, or if the carrier reasonably determines that this method for calculating the rural rate is unfair, then the carrier shall submit for the state commission’s approval, for intrastate rates, or the Commission’s approval, for interstate rates, a cost-based rate for the provision of the service in the most economically efficient, reasonably available manner.

(1) The carrier must provide, to the state commission, or intrastate rates, or to the Commission, for interstate rates, a justification of the proposed rural rate, including an itemization of the costs of providing the requested service.

(2) The carrier must provide such information periodically thereafter as required, by the state commission for intrastate rates or the Commission for interstate rates. In doing so, the carrier must take into account anticipated and actual demand for telecommunications services by all cus-

tomers who will use the facilities over which services are being provided to eligible health care providers.

§ 54.609 Calculating support.

(a) Except with regard to services provided under § 54.621 and subject to the limitations set forth in this subpart, the amount of universal service support for an eligible service provided to a rural health care provider shall be the difference, if any, between the urban rate and the rural rate charged for the service, as defined herein. In addition, all reasonable charges that are incurred by taking such services, such as state and federal taxes shall be eligible for universal service support. Charges for termination liability, penalty surcharges, and other charges not included in the cost of taking such service shall not be covered by the universal service support mechanisms.

(b) Except with regard to services provided under § 54.621, a telecommunications carrier that provides telecommunications service to a rural health care provider participating in an eligible health care consortium must establish the applicable rural rate for the health care provider’s portion of the shared telecommunications services, as well as the applicable urban rate. Absent documentation justifying the amount of universal service support requested for health care providers participating in a consortium, the Administrator shall not allow telecommunications carriers to offset, or receive reimbursement for, the amount eligible for universal service support.

(c) The universal service support mechanisms shall cover reduced rates on intrastate telecommunications services, as set forth in § 54.101(a), provided to rural health care providers as well as interstate telecommunications services.

[62 FR 32948, June 17, 1997, as amended at 62 FR 41305, Aug. 1, 1997; 63 FR 2131, Jan. 13, 1998; 63 FR 70572, Dec. 21, 1998]

§ 54.611 Distributing support.

(a) A telecommunications carrier providing services eligible for support under this subpart to eligible health care providers shall treat the amount eligible for support under this subpart

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as an offset against the carrier's universal service support obligation for the year in which the costs for providing eligible services were incurred.

(b) If the total amount of support owed to a carrier, as set forth in paragraph (a) of this section, exceeds its universal service obligation, calculated on an annual basis, the carrier may receive a direct reimbursement in the amount of the difference.

(c) Any reimbursement due a carrier shall be made after the offset is credited against that carrier's universal service obligation.

(d) Any reimbursement due a carrier shall be submitted to that carrier no later than the end of the first quarter of the calendar year following the year in which the costs were incurred and the offset against the carrier's universal service obligation was applied.

§ 54.613 Limitations on supported services for rural health care providers.

(a) Upon submitting a bona fide request to a telecommunications carrier, each eligible rural health care provider is entitled to receive the most cost-effective, commercially-available telecommunications service using a bandwidth capacity of 1.544 Mbps, at a rate no higher than the highest urban rate, as defined in this subpart, at a distance not to exceed the distance between the eligible health care provider's site and the farthest point from that site that is on the jurisdictional boundary of the nearest large city, as defined in § 54.605(c).

(b) The rural health care provider may substitute any other service or combination of services with transmission capacities of less than 1.544 Mbps transmitted over the same or a shorter distances, so long as the total annual support amount for all such services combined, calculated as provided in this subpart, does not exceed what the support amount would have been for the service described in paragraph (a) of this section. If the rural health care provider is located in an area where a service using a bandwidth capacity of 1.544 Mbps is not available, then the total annual support amount for that provider shall not exceed what the support amount would have been

under paragraph (a) of this section, calculated using the rural rate for a service of that capacity in another area of the state.

(c) This section shall not affect a rural health care provider's ability to obtain supported services under § 54.621.

§ 54.615 Obtaining services.

(a) *Selecting a provider.* In selecting a telecommunications carrier, a health care provider shall consider all bids submitted and select the most cost-effective alternative.

(b) *Receiving supported rate.* Except with regard to services provided under § 54.621, upon receiving a bona fide request for an eligible service from an eligible health care provider, as set forth in paragraph (c) of this section, a telecommunications carrier shall provide the service at a rate no higher than the urban rate, as defined in § 54.605, subject to the limitations set forth in this Subpart.

(c) *Bona fide request.* In order to receive services eligible for universal service support under this subpart, an eligible health care provider must submit a request for services to the telecommunications carrier, Signed by an authorized officer of the health care provider, and shall include that person's certification under oath that:

(1) The requester is a public or non-profit entity that falls within one of the seven categories set forth in the definition of health care provider, listed in § 54.601(a);

(2) The requester is physically located in a rural area, unless the health care provider is requesting services provided under § 54.621;

(3) If the health care provider is requesting services provided under § 54.621, that the requester cannot obtain toll-free access to an Internet service provider;

(4) The requested service or services will be used solely for purposes reasonably related to the provision of health care services or instruction that the health care provider is legally authorized to provide under the law in the state in which such health care services or instruction are provided;

(5) The requested service or services will not be sold, resold or transferred

in consideration of money or any other thing of value;

(6) If the service or services are being purchased as part of an aggregated purchase with other entities or individuals, the full details of any such arrangement, including the identities of all co-purchasers and the portion of the service or services being purchased by the health care provider; and

(7) The requester is selecting the most cost-effective method of providing the requested service or services, where the most cost-effective method of providing a service is defined as the method that costs the least after consideration of the features, quality of transmission, reliability, and other factors that the health care provider deems relevant to choosing a method of providing the required health care services.

(d) *Annual renewal.* The certification set forth in paragraph (c) of this section shall be renewed annually.

§ 54.617 Resale.

(a) *Prohibition on resale.* Services purchased pursuant to universal service support mechanisms under this subpart shall not be sold, resold, or transferred in consideration for money or any other thing of value.

(b) *Permissible fees.* The prohibition on resale set forth in paragraph (a) of this section shall not prohibit a health care provider from charging normal fees for health care services, including instruction related to such services rendered via telecommunications services purchased under this subpart.

§ 54.619 Audit program.

(a) *Recordkeeping requirements.* Health care providers shall maintain for their purchases of services supported under this subpart the same kind of procurement records that they maintain for other purchases.

(b) *Production of records.* Health care providers shall produce such records at the request of any auditor appointed by the Administrator or any other state or federal agency with jurisdiction.

(c) *Random audits.* Health care providers shall be subject to random compliance audits to ensure that requesters are complying with the certification requirements set forth in

§ 54.615(c) and are otherwise eligible to receive universal service support and that rates charged comply with the statute and regulations.

(d) *Annual report.* The Administrator shall use the information obtained under paragraph (a) of this section to evaluate the effects of the regulations adopted in this subpart and shall report its findings to the Commission on the first business day in May of each year.

[62 FR 32948, June 17, 1997, as amended at 63 FR 2132, Jan. 13, 1998; 63 FR 70572, Dec. 21, 1998]

§ 54.621 Access to advanced telecommunications and information services.

(a) Each eligible health care provider that cannot obtain toll-free access to an Internet service provider shall be entitled to receive the lesser of the toll charges incurred for 30 hours of access per month to an Internet service provider or \$180 per month in toll charge credits for toll charges imposed for connecting to an Internet service provider.

(b) Both telecommunications carriers designated as eligible telecommunications carriers pursuant to § 54.201(d) and telecommunications carriers not so designated that provide services described in paragraph (a) of this section shall be eligible for universal service support under this section.

§ 54.623 Cap.

(a) *Amount of the annual cap.* The annual cap on federal universal service support for health care providers shall be \$400 million per funding year, with the following exceptions. No more than \$3 million shall be collected or spent per quarter for the third and fourth quarters of 1999 and the first and second quarters of 2000 for the rural health care universal service support mechanism. No more than \$12 million shall be committed or disbursed during the twelve month period from July 1, 1999 through June 30, 2000.

(b) *Funding year.* A funding year for purposes of the health care providers cap shall be the period July 1 through June 30. For the initiation of the mechanism only, the eighteen month period from January 1, 1998 to June 30, 1999

shall be considered a funding year. Eligible health care providers filing applications within the initial 75-day filing window shall receive funding for requested services through June 30, 1999.

(c) *Requests.* Funds shall be available as follows:

(1) Generally, funds shall be available to eligible health care providers on a first-come-first-served basis, with requests accepted beginning on the first of January prior to each funding year.

(2) For the initial funding year, the Administrator shall implement an initial filing period that treats all health care providers filing within that period as if they were simultaneously received. The initial filing period shall begin on the date that the Administrator begins to receive applications for support, and shall conclude on a date to be determined by the Administrator.

(3) For the second funding year, which will begin on July 1, 1999, the Administrator shall implement a filing period that treats all health care providers filing within that period as if they were simultaneously received. The initial filing period shall begin on the date that the Administrator begins to receive applications for support, and shall conclude on a date to be determined by the Administrator.

(4) The Administrator may implement such additional filing periods as it deems necessary.

(d) *Annual filing requirement.* Health care providers shall file new funding requests for each funding year.

(e) *Long term contracts.* If health care providers enter into long term contracts for eligible services, the Administrator shall only commit funds to cover the portion of such a long term contract scheduled to be delivered during the funding year for which universal service support is sought.

(f) *Pro-rata reductions.* Administrator shall act in accordance with this paragraph when a filing period described in paragraph (c) of this section is in effect. When a filing period described in paragraph (c) of this section closes, Administrator shall calculate the total demand for support submitted by all applicants during the filing window. If the total demand exceeds the total support available for the funding year, Ad-

ministrator shall take the following steps:

(1) Administrator shall divide the total funds available for the funding year by the total amount of support requested to produce a pro-rata factor.

(2) Administrator shall calculate the amount of support requested by each applicant that has filed during the filing window.

(3) Administrator shall multiply the pro-rata factor by the total dollar amount requested by each applicant. Administrator shall then commit funds to each applicant consistent with this calculation.

[62 FR 32948, June 17, 1997, as amended at 62 FR 56120, Oct. 29, 1997; 63 FR 2132, Jan. 13, 1998; 63 FR 3832, Jan. 27, 1998; 63 FR 43097, Aug. 12, 1998; 63 FR 70572, Dec. 21, 1998; 64 FR 2594, Jan. 15, 1999; 64 FR 30442, June 8, 1999]

§ 54.625 Support for services beyond the maximum supported distance for rural health care providers.

(a) The maximum support distance is the distance from the health care provider to the farthest point on the boundary of the nearest large city, as calculated by the Administrator.

(b) An eligible rural health care provider may purchase an eligible telecommunications service, as defined in § 54.601(c)(1) through (c)(2), that is provided over a distance that exceeds the maximum supported distance.

(c) If an eligible rural health care provider purchases an eligible telecommunications service, as defined in § 54.601(c)(1) through (c)(2), that exceeds the maximum supported distance, the health care provider must pay the applicable rural rate for the distance that such service is carried beyond the maximum supported distance.

[63 FR 2132, Jan. 13, 1998, as amended at 63 FR 70572, Dec. 21, 1998]

Subpart H—Administration

§ 54.701 Administrator of universal service support mechanisms.

(a) The Universal Service Administrative Company is appointed the permanent Administrator of the federal universal service support mechanisms, subject to a review after one year by

the Federal Communications Commission to determine that the Administrator is administering the universal service support mechanisms in an efficient, effective, and competitively neutral manner.

(b) The Schools and Libraries Corporation and the Rural Health Care Corporation shall merge into the Universal Service Administrative Company by January 1, 1999; provided, however, that the merger shall not take place until the Common Carrier Bureau, acting pursuant to delegated authority, has approved the merger documents, the amended by-laws, and the amended articles of incorporation, as set forth in paragraphs (c) and (d) of this section.

(c) By December 1, 1998, the Schools and Libraries Corporation, the Rural Health Care Corporation and the Universal Service Administrative Company shall file with the Federal Communications Commission draft copies of all documents necessary to effectuate the merger.

(d) By December 1, 1998, the Universal Service Administrative Company shall file with the Federal Communications Commission draft copies of amended by-laws and amended articles of incorporation.

(e) Upon consummation of the merger of the Schools and Libraries Corporation and the Rural Health Care Corporation into the Universal Service Administrative Company, the Schools and Libraries Corporation and the Rural Health Care Corporation shall take all steps necessary to dissolve such corporations.

(f) The Administrator shall establish a nineteen (19) member Board of Directors, as set forth in § 54.703. The Administrator's Board of Directors shall establish three Committees of the Board of Directors, as set forth in § 54.705: (1) the Schools and Libraries Committee, which shall oversee the schools and libraries support mechanism; (2) the Rural Health Care Committee, which shall oversee the rural health care support mechanism; and (3) the High Cost and Low Income Committee, which shall oversee the high cost and low income support mechanism. The Board of Directors shall not modify substantially the power or authority of the

Committees of the Board without prior approval from the Federal Communications Commission.

(g) The Administrator shall establish three divisions: (1) the Schools and Libraries Division, which shall perform duties and functions in connection with the schools and libraries support mechanism under the direction of the Schools and Libraries Committee of the Board, as set forth in § 54.705(a); (2) the Rural Health Care Division, which shall perform duties and functions in connection with the rural health care support mechanism under the direction of the Rural Health Care Committee of the Board, as set forth in § 54.705(b); and (3) the High Cost and Low Income Division, which shall perform duties and functions in connection with the high cost and low income support mechanism under the direction of the High Cost and Low Income Committee of the Board, as set forth in § 54.705(c). As directed by the Committees of the Board set forth in § 54.705, these divisions shall perform the duties and functions unique to their respective support mechanisms.

(h) The Administrator shall be managed by a Chief Executive Officer, as set forth in § 54.704. The Chief Executive Officer shall serve on the Committees of the Board established in § 54.705.

[63 FR 70572, Dec. 21, 1998]

§ 54.702 Administrator's functions and responsibilities.

(a) The Administrator, and the divisions therein, shall be responsible for administering the schools and libraries support mechanism, the rural health care support mechanism, the high cost support mechanism and the low income support mechanism.

(b) The Administrator shall be responsible for billing contributors, collecting contributions to the universal service support mechanisms, and disbursing universal service support funds.

(c) The Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.

(d) The Administrator may advocate positions before the Commission and its staff only on administrative matters relating to the universal service support mechanisms.

(e) The Administrator shall maintain books of account separate from those of the National Exchange Carrier Association, of which the Administrator is an independent subsidiary. The Administrator's books of account shall be maintained in accordance with generally accepted accounting principles. The Administrator may borrow start up funds from the National Exchange Carrier Association. Such funds may not be drawn from the Telecommunications Relay Services (TRS) fund or TRS administrative expense accounts.

(f) Pursuant to its responsibility for billing and collecting contributions, the Administrator shall compare periodically information collected by the administrator of the TRS Fund from TRS Fund Worksheets with information submitted by contributors on Universal Service Worksheets to verify the accuracy of information submitted on Universal Service Worksheets. When performing a comparison of contributor information as provided by this paragraph, the Administrator must undertake company-by-company comparisons for all entities filing Universal Service and TRS Fund Worksheets.

(g) The Administrator shall create and maintain a website, as defined in § 54.5, on which applications for services will be posted on behalf of schools, libraries and rural health care providers.

(h) The Administrator shall file with the Commission and Congress an annual report by March 31 of each year. The report shall detail the Administrator's operations, activities, and accomplishments for the prior year, including information about participation in each of the universal service support mechanisms and administrative action intended to prevent waste, fraud, and abuse. The report also shall include an assessment of subcontractors' performance, and an itemization of monthly administrative costs that shall include all expenses, receipts, and payments associated with the administration of the universal service support programs.

The Administrator shall consult each year with Commission staff to determine the scope and content of the annual report.

(i) The Administrator shall report quarterly to the Commission on the disbursement of universal service support program funds. The Administrator shall keep separate accounts for the amounts of money collected and disbursed for eligible schools and libraries, rural health care providers, low-income consumers, and high cost and insular areas.

(j) Information based on the Administrator's reports will be made public by the Commission at least once a year as part of a Monitoring Report.

(k) The Administrator shall provide the Commission full access to the data collected pursuant to the administration of the universal service support programs.

(l) Pursuant to § 64.903 of this chapter, the Administrator shall file with the Commission a cost allocation manual (CAM) that describes the accounts and procedures the Administrator will use to allocate the shared costs of administering the universal service support mechanisms and its other operations.

(m) The Administrator shall make available to whomever the Commission directs, free of charge, any and all intellectual property, including, but not limited to, all records and information generated by or resulting from its role in administering the support mechanisms, if its participation in administering the universal service support mechanisms ends.

(n) If its participation in administering the universal service support mechanisms ends, the Administrator shall be subject to close-out audits at the end of its term.

[63 FR 70573, Dec. 21, 1998]

§ 54.703 The Administrator's Board of Directors.

(a) The Administrator shall have a Board of Directors separate from the Board of Directors of the National Exchange Carrier Association. The National Exchange Carrier Association's Board of Directors shall be prohibited from participating in the functions of the Administrator.

(b) *Board composition.* The independent subsidiary's Board of Directors shall consist of nineteen (19) directors:

(1) Three directors shall represent incumbent local exchange carriers, with one director representing the Bell Operating Companies and GTE, one director representing ILECs (other than the Bell Operating Companies) with annual operating revenues in excess of \$40 million, and one director representing ILECs (other than the Bell Operating Companies) with annual operating revenues of \$40 million or less;

(2) Two directors shall represent interexchange carriers, with one director representing interexchange carriers with more than \$3 billion in annual operating revenues and one director representing interexchange carriers with annual operating revenues of \$3 billion or less;

(3) One director shall represent commercial mobile radio service (CMRS) providers;

(4) One director shall represent competitive local exchange carriers;

(5) One director shall represent cable operators;

(6) One director shall represent information service providers;

(7) Three directors shall represent schools that are eligible to receive discounts pursuant to § 54.501;

(8) One director shall represent libraries that are eligible to receive discounts pursuant to § 54.501;

(9) Two directors shall represent rural health care providers that are eligible to receive supported services pursuant to § 54.601;

(10) One director shall represent low-income consumers;

(11) One director shall represent state telecommunications regulators;

(12) One director shall represent state consumer advocates; and

(13) The Chief Executive Officer of the Administrator.

(c) *Selection process for board of directors.* (1) Sixty (60) days prior to the expiration of a director's term, the industry or non-industry group that is represented by such director on the Administrator's Board of Directors, as specified in paragraph (b) of this section, shall nominate by consensus a new director. The industry or non-industry group shall submit the name of

its nominee for a seat on the Administrator's Board of Directors, along with relevant professional and biographical information about the nominee, to the Chairman of the Federal Communications Commission. Only members of the industry or non-industry group that a Board member will represent may submit a nomination for that position.

(2) The name of an industry or non-industry group's nominee shall be filed with the Office of the Secretary of the Federal Communications Commission in accordance with part 1 of this chapter. The document nominating a candidate shall be captioned "In the matter of: Nomination for Universal Service Administrator's Board of Directors" and shall reference FCC Docket Nos. 97-21 and 96-45. Each nomination shall specify the position on the Board of Directors for which such nomination is submitted. Two copies of the document nominating a candidate shall be submitted to the Common Carrier Bureau's Accounting Policy Division.

(3) The Chairman of the Federal Communications Commission shall review the nominations submitted by industry and non-industry groups and select each director of the Administrator's Board of Directors, as each director's term expires pursuant to paragraph (d) of this section. If an industry or non-industry group does not reach consensus on a nominee or fails to submit a nomination for a position on the Administrator's Board of Directors, the Chairman of the Federal Communications Commission shall select an individual to represent such group on the Administrator's Board of Directors.

(d) *Board member terms.* The directors on the Administrator's Board shall be appointed for three-year terms, except that the Chief Executive Officer shall be a permanent member of the Board. Board member terms shall run from January 1 of the first year of the term to December 31 of the third year of the term, except that, for purposes of the term beginning on January 1, 1999, the terms of six directors shall expire on December 31, 2000, the terms of another six directors on December 31, 2001, and the terms of the remaining six directors on December 31, 2002. Directors may be reappointed for subsequent

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terms pursuant to the initial nomination and appointment process described in paragraph (c) of this section. If a Board member vacates his or her seat prior to the completion of his or her term, the Administrator will notify the Common Carrier Bureau of such vacancy, and a successor will be chosen pursuant to the nomination and appointment process described in paragraph (c) of this section.

(e) All meetings of the Administrator's Board of Directors shall be open to the public and held in Washington, D.C.

(f) Each member of the Administrator's Board of Directors shall be entitled to receive reimbursement for expenses directly incurred as a result of his or her participation on the Administrator's Board of Directors.

[63 FR 70573, Dec. 21, 1998]

EFFECTIVE DATE NOTE: At 63 FR 70573, Dec. 21, 1998, § 54.703 was revised. Paragraph (c) contains modified information collection requirements and will not become effective until approved by the Office of Management and Budget.

§ 54.704 The Administrator's Chief Executive Officer.

(a) *Chief Executive Officer's functions.*

(1) The Chief Executive Officer shall have management responsibility for the administration of the federal universal service support mechanisms.

(2) The Chief Executive Officer shall have management responsibility for all employees of the Universal Service Administrative Company. The Chief Executive Officer may delegate such responsibility to heads of the divisions established in § 54.701(g).

(3) The Chief Executive Officer shall serve on the Administrator's Board of Directors as set forth in § 54.703(b) and on the Committees of the Board established under § 54.705.

(b) *Selection process for the Chief Executive Officer.* (1) The members of the Board of Directors of the Administrator shall nominate by consensus a Chief Executive Officer. The Board of Directors shall submit the name of its nominee for Chief Executive Officer, along with relevant professional and biographical information about the nominee, to the Chairman of the Federal Communications Commission.

(2) The Chairman of the Federal Communications Commission shall review the nomination submitted by the Administrator's Board of Directors. Subject to the Chairman's approval, the nominee shall be appointed as the Administrator's Chief Executive Officer.

(3) If the Board of Directors does not reach consensus on a nominee or fails to submit a nomination for the Chief Executive Officer, the Chairman of the Federal Communications Commission shall select a Chief Executive Officer.

[63 FR 70574, Dec. 21, 1998]

§ 54.705 Committees of the Administrator's Board of Directors.

(a) *Schools and Libraries Committee.*—

(1) *Committee functions.* The Schools and Libraries Committee shall oversee the administration of the schools and libraries support mechanism by the Schools and Libraries Division. The Schools and Libraries Committee shall have the authority to make decisions concerning:

(i) How the Administrator projects demand for the schools and libraries support mechanism;

(ii) Development of applications and associated instructions as needed for the schools and libraries support mechanism;

(iii) Administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations;

(iv) Performance of outreach and education functions;

(v) Review of bills for services that are submitted by schools and libraries;

(vi) Monitoring demand for the purpose of determining when the \$2 billion trigger has been reached;

(vii) Implementation of the rules of priority in accordance with § 54.507(g) of this chapter;

(viii) Review and certification of technology plans when a state agency has indicated that it will not be able to review such plans within a reasonable time;

(ix) The classification of schools and libraries as urban or rural and the use of the discount matrix established in § 54.505(c) of this chapter to set the discount rate to be applied to services

purchased by eligible schools and libraries;

(x) Performance of audits of beneficiaries under the schools and libraries support mechanism; and

(xi) Development and implementation of other functions unique to the schools and libraries support mechanism.

(2) *Committee composition.* The Schools and Libraries Committee shall consist of the following members of the Administrator's Board of Directors:

(i) Three school representatives;

(ii) One library representative;

(iii) One service provider representative;

(iv) One at-large representative elected by the Administrator's Board of Directors; and

(v) The Administrator's Chief Executive Officer.

(b) *Rural Health Care Committee.*—(1) *Committee functions.* The Rural Health Care Committee shall oversee the administration of the rural health care support mechanism by the Rural Health Care Division. The Rural Health Care Committee shall have authority to make decisions concerning:

(i) How the Administrator projects demand for the rural health care support mechanism;

(ii) Development of applications and associated instructions as needed for the rural health care support mechanism;

(iii) Administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations;

(iv) Calculation of support levels under § 54.609;

(v) Performance of outreach and education functions;

(vi) Review of bills for services that are submitted by rural health care providers;

(vii) Monitoring demand for the purpose of determining when the \$400 million cap has been reached;

(viii) Performance of audits of beneficiaries under the rural health care support mechanism; and

(ix) Development and implementation of other functions unique to the rural health care support mechanism.

(2) *Committee composition.* The Rural Health Care Committee shall consist of the following members of the Administrator's Board of Directors:

(i) Two rural health care representatives;

(ii) One service provider representative;

(iii) Two at-large representatives elected by the Administrator's Board of Directors;

(iv) One State telecommunications regulator, one state consumer advocate; and

(v) The Administrator's Chief Executive Officer.

(c) *High Cost and Low Income Committee.*—(1) *Committee functions.* The High Cost and Low Income Committee shall oversee the administration of the high cost and low income support mechanisms by the High Cost and Low Income Division. The High Cost and Low Income Committee shall have the authority to make decisions concerning:

(i) How the Administrator projects demand for the high cost and low income support mechanisms;

(ii) Development of applications and associated instructions as needed for the high cost and low income support mechanisms;

(iii) Administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations;

(iv) Performance of audits of beneficiaries under the high cost and low income support mechanisms; and

(v) Development and implementation of other functions unique to the high cost and low income support mechanisms.

(2) *Committee composition.* The High Cost and Low Income Committee shall consist of the following members of the Administrator's Board of Directors:

(i) One low income representative;

(ii) One state telecommunications regulator;

(iii) One state consumer advocate;

(iv) Two incumbent local exchange carrier representatives (one shall represent rural telephone companies, as that term is defined in 47 U.S.C. 153(37) and one shall represent non-rural telephone companies);

- (v) One interexchange carrier representative;
- (vi) One competing local exchange carrier representative;
- (vii) One commercial mobile radio service representative; and
- (viii) The Administrator's Chief Executive Officer.

(d) *Binding Authority of Committees of the Board.*

(1) Any action taken by the Committees of the Board established in paragraphs (a) through (c) of this section shall be binding on the Board of Directors of the Administrator, unless such action is presented for review to the Board by the Administrator's Chief Executive Officer and the Board disapproves of such action by a two-thirds vote of a quorum of directors, as defined in the Administrator's by-laws.

(2) The budgets prepared by each Committee shall be subject to Board review as part of the Administrator's combined budget. The Board shall not modify the budgets prepared by the Committees of the Board unless such modification is approved by a two-thirds vote of a quorum of the Board, as defined in the Administrator's by-laws.

[63 FR 70574, Dec. 21, 1998]

§ 54.706 Contributions.

(a) Entities that provide interstate telecommunications to the public, or to such classes of users as to be effectively available to the public, for a fee will be considered telecommunications carriers providing interstate telecommunications services and must contribute to the universal service support programs. Interstate telecommunications include, but are not limited to:

- (1) Cellular telephone and paging services;
- (2) Mobile radio services;
- (3) Operator services;
- (4) Personal communications services (PCS);
- (5) Access to interexchange service;
- (6) Special access service;
- (7) WATS;
- (8) Toll-free service;
- (9) 900 service;
- (10) Message telephone service (MTS);
- (11) Private line service;
- (12) Telex;

- (13) Telegraph;
- (14) Video services;
- (15) Satellite service;
- (16) Resale of interstate services; and
- (17) Payphone services.

(b) Every telecommunications carrier that provides interstate telecommunications services, every provider of interstate telecommunications that offers telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators shall contribute to the programs for eligible schools, libraries, and health care providers on the basis of its interstate, intrastate, and international end-user telecommunications revenues. Entities providing open video systems (OVS), cable leased access, or direct broadcast satellite (DBS) services are not required to contribute on the basis of revenues derived from those services. The following entities will not be required to contribute to universal service: non-profit schools, non-profit colleges, non-profit universities, non-profit libraries, and non-profit health care providers; broadcasters; systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications.

(c) Every telecommunications carrier that provides interstate telecommunications services, every provider of interstate telecommunications that offers telecommunications for a fee on a non-common carrier basis, and payphone providers that are aggregators shall contribute to the programs for high cost, rural and insular areas, and low-income consumers on the basis of its interstate and international end-user telecommunications revenues. Entities providing OVS, cable leased access, or DBS services are not required to contribute on the basis of revenues derived from those services. The following entities will not be required to contribute to universal service: non-profit schools, non-profit colleges, non-profit universities, non-profit libraries, and non-profit health care providers; broadcasters; systems integrators that derive less than five percent of their systems integration revenues from the resale of telecommunications.

[63 FR 70575, Dec. 21, 1998]

§ 54.708 De minimis exemption.

If a contributor's contribution to universal service in any given year is less than \$10,000 that contributor will not be required to submit a contribution or Telecommunications Reporting Worksheet for that year unless it is required to do so by our rules governing Telecommunications Relay Service (47 CFR 64.601 *et seq.* of this chapter), numbering administration (47 CFR 52.1 *et seq.* of this chapter), or shared costs of local number portability (47 CFR 52.21 *et seq.* of this chapter). If a contributor improperly claims exemption from the contribution requirement, it will be subject to the criminal provisions of sections 220(d) and (e) of the Act regarding willful false submissions and will be required to pay the amounts withheld plus interest.

[64 FR 41331, July 30, 1999]

§ 54.709 Computations of required contributions to universal service support mechanisms.

(a) Contributions to the universal service support mechanisms shall be based on contributors' end-user telecommunications revenues and contribution factors determined quarterly by the Commission.

(1) For funding the schools and libraries and rural health care programs, the subject revenues will be contributors' interstate, intrastate, and international revenues derived from domestic end users for telecommunications or telecommunications services. For funding the high cost and low-income programs, the subject revenues will be contributors' interstate and international revenues derived from domestic end users for telecommunications or telecommunications services.

(2) The quarterly universal service contribution factors shall be based on the ratio of total projected quarterly expenses of the universal service support programs to total end-user telecommunications revenues. The Commission shall determine two contribution factors, one of which shall be applied to interstate and international end-user telecommunications revenues and the other of which shall be applied to interstate, intrastate, and international end-user telecommunications

revenues. The Commission shall approve the Administrator's quarterly projected costs of universal service support programs, taking into account demand for support and administrative expenses. The total subject revenues shall be compiled by the Administrator based on information contained in the Telecommunications Reporting Worksheets described in § 54.711(a).

(3) Total projected expenses for universal service support programs for each quarter must be approved by the Commission before they are used to calculate the quarterly contribution factors and individual contributions. For each quarter, the Administrator must submit its projections of demand for the high cost and low-income support mechanisms, the schools and libraries support mechanism, and the rural health care support mechanism, respectively, and the basis for those projections, to the Commission and the Common Carrier Bureau at least sixty (60) calendar days prior to the start of that quarter. For each quarter, the Administrator must submit its projections of administrative expenses for the high cost and low-income programs, the schools and libraries program and the rural health care program and the basis for those projections to the Commission and the Common Carrier Bureau at least sixty (60) calendar days prior to the start of that quarter. Based on data submitted to the Administrator on the Universal Service Worksheets, the Administrator must submit the total contribution bases to the Common Carrier Bureau at least sixty (60) days before the start of each quarter. The projections of demand and administrative expenses and the contribution factors shall be announced by the Commission in a public notice and shall be made available on the Commission's website. The Commission reserves the right to set projections of demand and administrative expenses at amounts that the Commission determines will serve the public interest at any time within the fourteen-day period following release of the Commission's public notice. If the Commission takes no action within fourteen (14) days of the date of release of the public notice announcing the

projections of demand and administrative expenses, the projections of demand and administrative expenses, and contribution factors shall be deemed approved by the Commission. Once the projections and contribution factors are approved, the Administrator shall apply the quarterly contribution factors to determine individual contributions.

(4) For each quarter, the Administrator shall bill contributors monthly and require payment of contributions in equal monthly installments.

(5) The Administrator shall not require contributors to make payments pursuant to the universal service mechanisms set forth in 47 U.S.C. 254 prior to February 1998.

(b) If the contributions received by the Administrator in a quarter exceed the amount of universal service support program contributions and administrative costs for that quarter, the excess payments will be carried forward to the following quarter. The contribution factors for the following quarter will take into consideration the projected costs of the support mechanisms for that quarter and the excess contributions carried over from the previous quarter.

(c) If the contributions received by the Administrator in a quarter are inadequate to meet the amount of universal service support program payments and administrative costs for that quarter, the Administrator shall request authority from the Commission to borrow funds commercially, with such debt secured by future contributions. Subsequent contribution factors will take into consideration the projected costs of the support mechanisms and the additional costs associated with borrowing funds.

(d) If a contributor fails to file a Telecommunications Reporting Worksheet by the date on which it is due, the Administrator shall bill that contributor based on whatever relevant data the Administrator has available, including, but not limited to, the number of lines presubscribed to the contributor and data from previous years,

taking into consideration any estimated changes in such data.

[62 FR 41305, Aug. 1, 1997, as amended at 62 FR 65038, Dec. 10, 1997; 63 FR 2132, Jan. 13, 1998; 63 FR 43098, Aug. 12, 1998; 63 FR 70576, Dec. 21, 1998; 64 FR 41331, July 30, 1999]

§ 54.711 Contributor reporting requirements.

(a) Contributions shall be calculated and filed in accordance with the Telecommunications Reporting Worksheet which shall be published in the FEDERAL REGISTER. The Telecommunications Reporting Worksheet sets forth information that the contributor must submit to the Administrator on a semi-annual basis. The Commission shall announce by Public Notice published in the FEDERAL REGISTER and on its website the manner of payment and dates by which payments must be made. An officer of the contributor must certify to the truth and accuracy of the Telecommunications Reporting Worksheet, and the Commission or the Administrator may verify any information contained in the Telecommunications Reporting Worksheet at the discretion of the Commission. Inaccurate or untruthful information contained in the Telecommunications Reporting Worksheet may lead to prosecution under the criminal provisions of Title 18 of the United States Code. The Administrator shall advise the Commission of any enforcement issues that arise and provide any suggested response.

(b) The Commission shall have access to all data reported to the Administrator. Contributors may make requests for Commission nondisclosure of company-specific revenue information under § 0.459 of this chapter by so indicating on the Telecommunications Reporting Worksheet at the time that the subject data are submitted. The Commission shall make all decisions regarding nondisclosure of company-specific information. The Administrator shall keep confidential all data obtained from contributors, shall not use such data except for purposes of administering the universal service support programs, and shall not disclose such data in company-specific form unless directed to do so by the Commission.

Subject to any restrictions imposed by the Chief of the Common Carrier Bureau, the Universal Service Administrator may share data obtained from contributors with the administrators of the North American Numbering Plan administration cost recovery (See 47 CFR 52.16 of this chapter), the local number portability cost recovery (See 47 CFR 52.32 of this chapter), and the TRS Fund (See 47 CFR 64.604(c)(4)(iii)(H) of this chapter). The Administrator shall keep confidential all data obtained from other administrators and shall not use such data except for purposes of administering the universal service support mechanisms.

(c) The Bureau may waive, reduce, modify, or eliminate contributor reporting requirements that prove unnecessary and require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the universal service support mechanisms.

[64 FR 41332, July 30, 1999]

§ 54.713 Contributors' failure to report or to contribute.

A contributor that fails to file a Telecommunications Reporting Worksheet and subsequently is billed by the Administrator shall pay the amount for which it is billed. The Administrator may bill a contributor a separate assessment for reasonable costs incurred because of that contributor's filing of an untruthful or inaccurate Telecommunications Reporting Worksheet, failure to file the Telecommunications Reporting Worksheet, or late payment of contributions. Failure to file the Telecommunications Reporting Worksheet or to submit required quarterly contributions may subject the contributor to the enforcement provisions of the Act and any other applicable law. The Administrator shall advise the Commission of any enforcement issues that arise and provide any suggested response. Once a contributor complies with the Telecommunications Reporting Worksheet filing requirements, the Administrator may refund any overpayments made by the contributor, less any fees, interest, or costs.

[64 FR 41332, July 30, 1999]

§ 54.715 Administrative expenses of the Administrator.

(a) The annual administrative expenses of the Administrator should be commensurate with the administrative expenses of programs of similar size, with the exception of the salary levels for officers and employees of the Administrator described in paragraph (b) of this section. The annual administrative expenses may include, but are not limited to, salaries of officers and operations personnel, the costs of borrowing funds, equipment costs, operating expenses, directors' expenses, and costs associated with auditing contributors of support recipients.

(b) All officers and employees of the Administrator may be compensated at an annual rate of pay, including any non-regular payments, bonuses, or other compensation, in an amount not to exceed the rate of basic pay in effect for Level I of the Executive Schedule under 5 U.S.C. 5312.

(c) The Administrator shall submit to the Commission projected quarterly budgets at least sixty (60) days prior to the start of every quarter. The Commission must approve the projected quarterly budgets before the Administrator disburses funds under the federal universal service support mechanisms. The administrative expenses incurred by the Administrator in connection with the schools and libraries support mechanism, the rural health care support mechanism, the high cost support mechanism and the low income support mechanism shall be deducted from the annual funding of each respective support mechanism. The expenses deducted from the annual funding for each support mechanism also shall include the Administrator's joint and common costs allocated to each support mechanism pursuant to the cost allocation manual filed by the Administrator under § 64.903 of this chapter.

[63 FR 70576, Dec. 21, 1998]

§ 54.717 Audits of the Administrator.

The Administrator shall obtain and pay for an annual audit conducted by an independent auditor to examine its operations and books of account to determine, among other things, whether

the Administrator is properly administering the universal service support mechanisms to prevent fraud, waste, and abuse:

(a) Before selecting an independent auditor, the Administrator shall submit preliminary audit requirements, including the proposed scope of the audit and the extent of compliance and substantive testing, to the Common Carrier Bureau Audit Staff.

(b) The Common Carrier Bureau Audit Staff shall review the preliminary audit requirements to determine whether they are adequate to meet the audit objectives. The Common Carrier Bureau Audit Staff shall prescribe modifications that shall be incorporated into the final audit requirements.

(c) After the audit requirements have been approved by the Common Carrier Bureau Audit Staff, the Administrator shall engage within thirty (30) calendar days an independent auditor to conduct the annual audit required by this paragraph. In making its selection, the Administrator shall not engage any independent auditor who has been involved in designing any of the accounting or reporting systems under review in the audit.

(d) The independent auditor selected by the Administrator to conduct the annual audit shall be instructed by the Administrator to develop a detailed audit program based on the final audit requirements and shall be instructed by the Administrator to submit the audit program to the Common Carrier Bureau Audit Staff. The Common Carrier Bureau Audit Staff shall review the audit program and make modifications, as needed, that shall be incorporated into the final audit program. During the course of the audit, the Common Carrier Bureau Audit Staff may direct the Administrator to direct the independent auditor to take any actions necessary to ensure compliance with the audit requirements.

(e) During the course of the audit, the Administrator shall instruct the independent auditor to:

(1) Inform the Common Carrier Bureau Audit Staff of any revisions to the final audit program or to the scope of the audit;

(2) Notify the Common Carrier Bureau Audit Staff of any meetings with the Administrator in which audit findings are discussed; and

(3) Submit to the Chief of the Common Carrier Bureau any accounting or rule interpretations necessary to complete the audit.

(f) Within sixty (60) calendar days after the end of the audit period, but prior to discussing the audit findings with the Administrator, the independent auditor shall be instructed by the Administrator to submit a draft of the audit report to the Common Carrier Bureau Audit Staff.

(g) The Common Carrier Bureau Audit Staff shall review the audit findings and audit workpapers and offer its recommendations concerning the conduct of the audit or the audit findings to the independent auditor. Exceptions of the Common Carrier Bureau Audit Staff to the findings and conclusions of the independent auditor that remain unresolved shall be included in the final audit report.

(h) Within fifteen (15) calendar days after receiving the Common Carrier Bureau Audit Staff's recommendations and making any revisions to the audit report, the Administrator shall instruct the independent auditor to submit the audit report to the Administrator for its response to the audit findings. At this time the auditor also must send copies of its audit findings to the Common Carrier Bureau Audit Staff. The Administrator shall provide the independent auditor time to perform additional audit work recommended by the Common Carrier Bureau Audit Staff.

(i) Within thirty (30) calendar days after receiving the audit report, the Administrator shall respond to the audit findings and send copies of its response to the Common Carrier Bureau Audit Staff. The Administrator shall instruct the independent auditor that any reply that the independent auditor wishes to make to the Administrator's responses shall be sent to the Common Carrier Bureau Audit Staff as well as the Administrator. The Administrator's response and the independent auditor's replies shall be included in the final audit report;

(j) Within ten (10) calendar days after receiving the response of the Administrator, the independent auditor shall file with the Commission the final audit report.

(k) Based on the final audit report, the Chief of the Common Carrier Bureau may take any action necessary to ensure that the universal service support mechanisms operate in a manner consistent with the requirements of this Part, as well as such other action as is deemed necessary and in the public interest.

[63 FR 70576, Dec. 21, 1998]

Subpart I—Review of Decisions Issued by the Administrator

§ 54.719 Parties permitted to seek review of Administrator decisions.

(a) Any person aggrieved by an action taken by a division of the Administrator, as defined in § 54.701(g), may seek review from the appropriate Committee of the Board, as defined in § 54.705.

(b) Any person aggrieved by an action taken by the Administrator pertaining to a billing, collection or disbursement matter that falls outside the jurisdiction of the Committees of the Board may seek review from the Board of Directors of the Administrator, as defined in § 54.703.

(c) Any person aggrieved by an action taken by a division of the Administrator, as defined in § 54.701(g), a Committee of the Board of the Administrator, as defined in § 54.705, or the Board of Directors of the Administrator, as defined in § 54.703, may seek review from the Federal Communications Commission, as set forth in § 54.722.

[63 FR 70577, Dec. 21, 1998]

§ 54.720 Filing deadlines.

(a) An affected party requesting review of an Administrator decision by the Commission pursuant to § 54.719(c), shall file such request within thirty (30) days of the issuance of the decision by a division or Committee of the Board of the Administrator.

(b) An affected party requesting review of a division decision by a Committee of the Board pursuant to

§ 54.719(a), shall file such request within thirty (30) days of issuance of the decision by the division.

(c) An affected party requesting review by the Board of Directors pursuant to § 54.719(b) regarding a billing, collection, or disbursement matter that falls outside the jurisdiction of the Committees of the Board shall file such request within thirty (30) days of issuance of the Administrator's decision.

(d) The filing of a request for review with a Committee of the Board under § 54.719(a) or with the full Board under § 54.703, shall toll the time period for seeking review from the Federal Communications Commission. Where the time for filing an appeal has been tolled, the party that filed the request for review from a Committee of the Board or the full Board shall have thirty (30) days from the date the Committee or the Board issues a decision to file an appeal with the Commission.

(e) Parties shall adhere to the time periods for filing oppositions and replies set forth in 47 CFR 1.45.

[63 FR 70577, Dec. 21, 1998]

§ 54.721 General filing requirements.

(a) Except as otherwise provided herein, a request for review of an Administrator decision by the Federal Communications Commission shall be filed with the Federal Communications Commission's Office of the Secretary in accordance with the general requirements set forth in part 1 of this chapter. The request for review shall be captioned "In the matter of: Request for Review by (name of party seeking review) of Decision of Universal Service Administrator" and shall reference FCC Docket Nos. 97–21 and 96–45.

(b) A request for review pursuant to § 54.719(a) through (c) shall contain: (1) a statement setting forth the party's interest in the matter presented for review; (2) a full statement of relevant, material facts with supporting affidavits and documentation; (3) the question presented for review, with reference, where appropriate, to the relevant Federal Communications Commission rule, Commission order, or statutory provision; (4) a statement of

the relief sought and the relevant statutory or regulatory provision pursuant to which such relief is sought.

(c) A copy of a request for review that is submitted to the Federal Communications Commission shall be served on the Administrator consistent with the requirement for service of documents set forth in §1.47 of this chapter.

(d) If a request for review filed pursuant to §54.720(a) through (c) alleges prohibitive conduct on the part of a third party, such request for review shall be served on the third party consistent with the requirement for service of documents set forth in §1.47 of this chapter. The third party may file a response to the request for review. Any response filed by the third party shall adhere to the time period for filing replies set forth in §1.45 of this chapter and the requirement for service of documents set forth in §1.47 of this chapter.

[63 FR 70578, Dec. 21, 1998]

EFFECTIVE DATE NOTE: At 63 FR 70578, Dec. 21, 1998, §54.721 was added. The section contains modified information collection requirements and will not become effective until approved by the Office of Management and Budget.

§54.722 Review by the Common Carrier Bureau or the Commission.

(a) Requests for review of Administrator decisions that are submitted to the Federal Communications Commission shall be considered and acted upon by the Common Carrier; provided, however, that requests for review that raise novel questions of fact, law or policy shall be considered by the full Commission.

(b) An affected party may seek review of a decision issued under delegated authority by the Common Carrier Bureau pursuant to the rules set forth in part 1 of this chapter.

[63 FR 70578, Dec. 21, 1998]

§54.723 Standard of review.

(a) The Common Carrier Bureau shall conduct *de novo* review of requests for review of decisions issued by the Administrator.

(b) The Federal Communications Commission shall conduct *de novo* re-

view of requests for review of decisions by the Administrator that involve novel questions of fact, law, or policy; provided, however, that the Commission shall not conduct *de novo* review of decisions issued by the Common Carrier Bureau under delegated authority.

[63 FR 70578, Dec. 21, 1998]

§54.724 Time periods for Commission approval of Administrator decisions.

(a) If the Common Carrier Bureau does not take action within ninety (90) days upon appeals that are properly before it, a decision issued by the Administrator shall be deemed approved; provided, however, that within the 90-day period, the Common Carrier Bureau may extend the time period for taking action on a request for review of an Administrator decision.

(b) The Commission shall issue a written decision in response to a request for review of an Administrator decision that involves novel questions of fact, law or policy within ninety (90) days; provided, however, that the Commission may extend the time period for taking action on the request for review.

[63 FR 70578, Dec. 21, 1998]

§54.725 Universal service disbursements during pendency of a request for review and Administrator decision.

(a) When a party has sought review of an Administrator decision under §54.719(a) through (c) in connection with the schools and libraries support mechanism or the rural health care support mechanism, the Administrator shall not reimburse a service provider for the provision of discounted services until a final decision has been issued either by the Administrator or by the Federal Communications Commission; provided, however, that the Administrator may disburse funds for any amount of support that is not the subject of an appeal.

(b) When a party has sought review of an Administrator decision under §54.719(a) through (c) in connection with the high cost and low income support mechanisms, the Administrator shall not disburse support to a service provider until a final decision has been

issued either by the Administrator or by the Federal Communications Commission; provided, however, that the Administrator may disburse funds for any amount of support that is not the subject of an appeal.

[64 FR 33788, June 24, 1999]

PART 59—INFRASTRUCTURE SHARING

Sec.

59.1 General duty.

59.2 Terms and conditions of infrastructure sharing.

59.3 Information concerning deployment of new services and equipment.

59.4 Definition of “qualifying carrier”.

AUTHORITY: 47 U.S.C. 154(i), 154(j), 201–205, 259, 303(r), 403.

SOURCE: 62 FR 9713, Mar. 4, 1997, unless otherwise noted.

§59.1 General duty.

Incumbent local exchange carriers (as defined in 47 U.S.C. section 251(h)) shall make available to any qualifying carrier such public switched network infrastructure, technology, information, and telecommunications facilities and functions as may be requested by such qualifying carrier for the purpose of enabling such qualifying carrier to provide telecommunications services, or to provide access to information services, in the service area in which such qualifying carrier has obtained designation as an eligible telecommunications carrier under section 214(e) of 47 U.S.C.

§59.2 Terms and conditions of infrastructure sharing.

(a) An incumbent local exchange carrier subject to the requirements of section 59.1 shall not be required to take any action that is economically unreasonable or that is contrary to the public interest.

(b) An incumbent local exchange carrier subject to the requirements of section 59.1 may, but shall not be required to, enter into joint ownership or operation of public switched network infrastructure, technology, information and telecommunications facilities and functions and services with a qualifying carrier as a method of fulfilling its obligations under section 59.1.

(c) An incumbent local exchange carrier subject to the requirements of section 59.1 shall not be treated by the Commission or any State as a common carrier for hire or as offering common carrier services with respect to any public switched network infrastructure, technology, information, or telecommunications facilities, or functions made available to a qualifying carrier in accordance with regulations issued pursuant to this section.

(d) An incumbent local exchange carrier subject to the requirements of section 59.1 shall make such public switched network infrastructure, technology, information, and telecommunications facilities, or functions available to a qualifying carrier on just and reasonable terms and pursuant to conditions that permit such qualifying carrier to fully benefit from the economies of scale and scope of such local exchange carrier. An incumbent local exchange carrier that has entered into an infrastructure sharing agreement pursuant to section 59.1 must give notice to the qualifying carrier at least sixty days before terminating such infrastructure sharing agreement.

(e) An incumbent local exchange carrier subject to the requirements of section 59.1 shall not be required to engage in any infrastructure sharing agreement for any services or access which are to be provided or offered to consumers by the qualifying carrier in such local exchange carrier's telephone exchange area.

(f) An incumbent local exchange carrier subject to the requirements of section 59.1 shall file with the State, or, if the State has made no provision to accept such filings, with the Commission, for public inspection, any tariffs, contracts, or other arrangements showing the rates, terms, and conditions under which such carrier is making available public switched network infrastructure, technology, information and telecommunications facilities and functions pursuant to this part.

§59.3 Information concerning deployment of new services and equipment.

An incumbent local exchange carrier subject to the requirements of section